

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.960 of 2019

Divisional Manager, The New India Assurance Co. Ltd. ***Appellant***

Er. N.K. Mohanty, Advocate

-versus-

Tulu Sahoo and another ***Respondents***

Mr. B.N. Samantaray, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

18.04.2022

Order No.

07.

1. Heard Mr. N.K. Mohanty, learned counsel for the Appellant-Insurance Company as well as Mr. B.N. Samantaray, learned counsel for the Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment and award dated 14.8.2019 passed in E.C. Case No.149-D/2016 by the Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Cuttack wherein compensation to the tune of Rs.9,70,454/- along with interest has been granted to the claimant-Respondent No.1 on account of injury sustained by him in course of and arising out of the employment as driver in the Auto-rickshaw bearing Registration No.OR-05-AG-9539.

3. It is submitted on behalf of the Appellant-Insurance Company that the claimant was not the driver of the Auto-rickshaw, but was a passenger therein at the time of accident. Therefore, the claim at his instance is not maintainable and he is not entitled for any compensation.

4. It reveals from the impugned award that the claimant examined himself as P.W.1. The owner-O.P. No.2 was examined as O.P.W.1 and the Investigator of the Appellant-Company was examined as O.P.W.2. As per the evidence of P.W.1, he was driving the Auto-rickshaw and this statement of P.W.1 has been duly supported in the evidence of OPW-1 (the owner). The consistent evidence of both these P.W.1 and OPW-1 are to the effect that the claimant was the driver of the Auto-rickshaw at the time of accident. Besides those oral evidences, the claimant also relied on his driving license and the police papers. On the other hand, OPW-2 being an Investigator of the Appellant-Company has admittedly no direct knowledge about the accident and thus his statement that the claimant was not the driver is found unacceptable. The further contention raised by the Appellant that some of the witnesses have stated before the Police that OPW-1 was driving the vehicle, has no merit because they were not examined before the Commissioner in the present dispute and any such statements made by them before the police are not relevant in the present claim application. As such, the contention raised by the Appellant not to treat the claimant as the driver of the Auto-rickshaw is rejected being without substance.

5. In the result, the appeal is dismissed.

(B.P. Routray)
Judge