

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.241 of 2021

The Vice President and Zone Head *Appellant*
(Claims), M/s.Tata AIG General
Insurance Co. Ltd.

Mr. G.P. Dutta, Advocate

-versus-

Kartik Malik and another *Respondents*
Mr. P.K. Nayak, Advocate for Respondent No.2
Mr. K. Das, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
26.04.2022

Order No.

I.A. No.7/2022 & FAO No.241 of 2021

02. 1. Heard Mr. G.P. Dutta, learned counsel for the Appellant, Mr. K. Das, learned counsel for the Respondent No.1 and Mr. P.K. Nayak, learned counsel for the Respondent No.2.
2. Present appeal by the insurer is directed against the judgment and award dated 26.8.2021 passed in E.C. Case No.91/2015 by the Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Odisha, Bhubaneswar wherein compensation to the tune of Rs.6,77,578/- 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 a labourer in the Truck bearing Registration No.OR-09-D-7287.
3. It is submitted by the Appellant that no such accident took place since one of the co-injured who is the helper of the truck

has admitted in writing about the same. The copy of the said hand written statement of the helper, namely, Harekrushna Samal is sought to be adduced by way of additional evidence.

4. Mr. K. Das, learned counsel for the Respondent No.1-claimant vehemently objects such prayer of the Appellant to adduce any additional evidence. It is submitted that same contention raised by the Appellant in respect of the compensation granted to that helper in his appeal i.e. FAO No.240 of 2021 has been considered and rejected by this court by order dated 28.3.2022. So no merit is there in such contention again raised here in the present appeal.

5. Upon hearing both the parties and perusal of copy of the order dated 28.3.2022 of this Court passed in FAO No.240 of 2021 reveals that, in that appeal preferred against compensation granted to Harekrushna Samal in the same accident connected to the present appeal, this Court has rejected the contention of the Appellant to reject the prayer to adduce additional evidence on the ground that the materials sought to be adduced are inadmissible in evidence. As such the same reason is applied in the present case to reject the prayer of adducing additional evidence by the Appellant.

6. Next considering the grounds of challenge advanced with regard to the quantum of compensation, it is urged on behalf of the Appellant that the injured-claimant did not suffer any permanent disability up-to 45% and the assessment of the learned Commissioner to that effect as well as consequential loss of earning capacity taken to the extent of 80% is illegal and is therefore liable to be reviewed. It is further submitted that the

income of the claimant has been taken at a higher side at Rs.7500/- though admittedly he was a labourer.

7. Upon examination of such submissions made by the Appellant, it is seen that on the date of accident, i.e., 09.05.2015, the rate of daily wages prescribed was Rs.200/- per day in terms of SRO No.323/2015. Since the status of the claimant as a labourer is not disputed, his income is fixed at Rs.6000/- per month.

So far as the objections raised with regard to disability aspect and consequent loss of earning capacity, as per the learned Commissioner, the same was 45% and 80% respectively based on the evidence of the Doctor-P.W.2. Admittedly P.W.2, the Doctor examined on behalf of the claimant is a qualified Doctor and his qualification as such is not questioned. Thus in view of the clear statutory provision contained in Section 4(1)(c)(ii) followed by Explanation-II attached thereof, such assessment by the learned Commissioner based on the evidence on P.W.2 does not warrant any interference.

8. In view of the discussions made above, taking monthly income of the injured-claimant at Rs.6000/- and accepting his disability up-to 45% leading to loss of earning capacity up-to 80% as per the evidence of P.W.2, the compensation assessed is as follows;-

$$\begin{aligned} & 201.66 \text{ (age factor)} \times 3600 \text{ (60\% of monthly} \\ & \text{wages)} \times 80/100 \text{ (percentage of loss of earning} \\ & \text{capacity)} \\ & \quad = \text{Rs.5,80,780/-} \end{aligned}$$

9. Since the entire award amount has been deposited before the learned Commissioner, out of the said amount, a sum of Rs.5,80,780/- (five lakhs eighty thousand seven hundred eighty)

along with proportionate interest accrued thereon be disbursed in favour of the claimant-Respondent No.1 within a period of eight weeks from today and the balance amount along with proportionate accrued interest thereof shall be refunded to the Appellant-Insurance Company within the same period on proper application.

10. With aforesaid modification of the award, the FAO is disposed of.

11. An urgent certified copy of this order be granted on proper application.

(*B.P. Routray*)
Judge

