

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.259 of 2021

***The Divisional Manager, M/s. National
Insurance Company Ltd.***

.... ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Mamili Sahu and Others

.... ***Respondents***

Mr. D. Pattanaik, counsel for Respondents 1-3

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
18.4.2022

Order No.

04. 1. Heard Mr. G.P. Dutta, learned counsel for the insurer-Appellant and Mr. D. Pattanaik, learned counsel for claimant Respondents 1 to 3.
2. Present appeal by the insurer is directed against the award dated 30th April, 2021 of the learned Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Cuttack in E.C. Case No.49-D of 2019 wherein compensation to the tune of Rs.12,55,086/- including interest has been awarded on account of death of the deceased in course of and arising out of his employment as driver of the truck bearing registration number OD 02 AB 4671.
3. It is submitted on behalf of the Appellant that the deceased died by committing suicide and therefore, the compensation granted taking death of the deceased as arising out of the accident is improper and liable to be altered.

4. Upon hearing learned counsel for Respondents, it is seen that the admitted case of the claimants is that the deceased died by suicide. Of course sustenance of injuries by the deceased in the accident dated 9th February, 2018 and his treatment till he committed suicide is not disputed by the insurer. The deceased sustained injuries on his chest and head in the accident dated 9th February, 2018. He was under treatment as an indoor patient from 10th February, 2018 to 25th February, 2018 at Aswini Hospital, Cuttack and then again at SV NIRTAR, Olatpur, Cuttack from 26th February, 2018 to 30th January, 2019. However, no such document with regard to the accident dated 9th February, 2018 or the nature of injuries sustained in that accident have been produced on record before the learned Commissioner.

5. But whatever may be the injuries are, when death by suicide is admitted, the same at no circumstance can be attributed to the injuries sustained due to the accident. Therefore the finding of the learned Commissioner that the deceased died arising out of the accident in course of his employment is not sustainable. It is a different question that, how much amount of compensation he would be entitled to for his injuries sustained in the accident.

6. Since the employment of deceased as driver in the offending vehicle, the injuries on the chest and head due to the accident and his treatment in different hospitals are not disputed and moreover the accident happened long back on 9th February, 2018, in my considered opinion a reduced compensation of Rs.8,50,000/- consolidated would suffice the purpose towards the amount of compensation in respect of injuries and treatment undergone thereof.

7. The further contention of the Appellant that for lack of permit on the part of the offending vehicle, recovery right should be granted in favour of the insurer is rejected in absence of any express provision under the Employee's Compensation Act to that effect.

8. Since the entire compensation amount has already been deposited before the learned Commissioner, out of the same a consolidated sum of Rs.8,50,000/- (eight lakh fifty thousand) along with accrued interest thereof be disbursed in favour of the claimant – Respondent Nos.1 to 3 within a period of two months from today. The rest amount along with accrued interest thereof be refunded to the insurer – Appellant.

9. With aforesaid modification to the award, the appeal is disposed of.

10. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge