

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.282 of 2021

***Orissa State Road Transport
Corporation***

.... ***Appellant***

Mr. B.K. Sahoo, Advocate

-versus-

Siba Prasad Ketki

.... ***Respondent***

Mr. K.K. Das, Advocate

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
06.01.2022**

Order No.

05.

1. Heard Mr. B.K. Sahoo, learned counsel for the Appellant as well as Mr. K.K. Das, learned counsel for the claimant-Respondent.

2. The present appeal filed by the employer, i.e. Orissa State Road Transport Corporation is directed against the judgment and award dated 15.11.2019 passed in E.C. Case No. 16/2018 by the Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Jagatsinghpur.

3. In the impugned award, learned Commissioner has directed for payment of compensation to the tune of Rs.5,29,384/- on account of injury sustained by the claimant in the accident dated 17.10.2016.

4. The case of the claimant was that he was serving as a Driver under the employment of the Appellant and on the date of accident, he was discharging his duty in the Bus bearing Registration No.OR-08-F-9669 coming from Bhawanipatna to Bhubaneswar. Due to the accident on the way, he sustained injuries in leg and other multiple injuries.

5. Mr. B.K. Sahoo, learned counsel for the Appellant submits that the learned Commissioner of Jagatsinghpur has no jurisdiction to entertain the claim application for the reason that neither the claimant was a resident of Jagatsinghpur nor the accident took place at Jagatsinghpur. Admittedly the accident took place in the district of Boudh and the claimant is a permanent resident in the district of Nuapada. Therefore the Commissioner at Jagatsinghpur has no jurisdiction to entertain the application. Secondly, it is further submitted that without adducing any disability certificate, the claimant examined the Doctor of his choice and based on his opinion, learned Commissioner has accepted loss of earning capacity upto 85% and accordingly awarded the compensation to the aforesaid tune.

6. On the other hand, Mr. K.K. Das, learned counsel for the claimant-Respondent submits that the office of the District Transport Manager (D.T.M.) is there in the district of Jagatsinghpur and the claimant was last resided at Jagatsinghpur and as such in view of Section 21(1) of the E.C. Act, the claim application at Jagatsinghpur is maintainable.

7. Learned counsel for the appellant was unable to deny the contention whether any office of D.T.M. is there at Jagatsinghpur or the place last resided by the claimant. As such without getting into the dispute further, which appears to be technical in nature, this Court *prima facie* agrees in favour of the claimant that the claim application filed by him at Jagatsinghpur is maintainable.

8. So far the contention relating to extent of disability sustained due to the accident and the percentage of loss of future earning capacity is concerned, it is seen from the impugned judgment that the claimant has produced certified copies of the FIR, certified copy of the injury report, original discharge certificate, X-ray plates and three original prescriptions of disability along-with loss of earning capacity certificate issued by the Doctor, namely, Dr. Anadi Charan Naik (P.W.2). Admittedly the age, wage and employment of the injured-claimant are not disputed. The authenticity of the prescriptions for disability and loss of earning capacity is seriously questioned by the Appellant. Upon examination of the same as well as the evidence of P.W.2, copy of which has been produced in course of hearing, it is found that P.W.2 is not the authorized person to issue any disability certificate in terms of the statutory provisions.

9. Mr. Das, learned counsel for the claimant concedes in course of hearing that the claimant has not approached the appropriate medical board for issuance of any disability certificate in respect of the injury sustained by him. Thus the opinion of P.W.2 who was examined on behalf of the claimant cannot be accepted as

such to conclude the percentage of disability up-to 70% permanently resulting future loss of earning capacity to the extent of 80%. At the same time, keeping in view the nature of injuries which includes undisputed fracture of the leg and the fact that the appellant has undergone operation as well as skin grafting, in absence of the disability certificate or the opinion of the authorized medical board, the disability can be restricted to 50%. Thus in my opinion, the amount of compensation is liable to be reduced to Rs.4,50,000/- consolidated, which would suffice the purpose. Learned counsel for the claimant-Respondent agrees to the same.

10. Accordingly, the award amount is modified to the above extent and the Appellant is directed to pay consolidated amount of compensation of Rs.4,50,000/- (rupees four lakhs fifty thousand) to the claimant-Respondent.

11. Since the entire award amount has been deposited before the learned Commissioner, out of the said amount, a sum of Rs.4,50,000/- along with proportionate accrued interest be disbursed in favour of the claimant-Respondent within a period of eight weeks from today and the balance amount along with accrued interest thereon shall be refunded to the Appellant within the same period on proper application.

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

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

(B.P. Routray)
Judge



B.K. Barik