A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.1035 of 2019

Manager, Magma HDI General Insurance Company Limited	....	***Appellant***
		Mr.A.A.Khan, Advocate

-versus-

Puspalata Sahoo and others	....	***Respondents***
		Mr.S.K.Mohanty, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
27.10.2022

Order No.
2.

1. The matter is taken up through Hybrid mode.

2. Heard Mr.Khan, learned counsel for the Appellant and Mr.Mohanty, learned counsel for Respondent No.1.

3. Present appeal by the Insurer is against the judgment dated 27th November, 2019 of the Commissioner for Employee's Compensation-Cum-Divisional Labour Commissioner, Cuttack, in E.C.Case No.163-D/2015, wherein compensation to the tune of Rs.7,36,680/- has been granted with effect from the date of filing of the claim application on account of death of the deceased in

course of his employment as a driver of Scorpio Vehicle bearing Registration No.OR-05-AV-5462.

4. Mr.Khan contends that the deceased, who was driving the offending vehicle, was not having a valid D.L. on the date of accident. The copy of D.L. shown to have been possessed by the deceased is a fake D.L. Secondly, it is contended that the deceased has been murdered and therefore, the case does not fall under the purview of accidental death.

5. The facts of the case reveal that the deceased was a driver of the offending Scorpio vehicle bearing Registration No.OR-05-AV-5462. On the fateful day when he was returning from Puri with unknown passengers, who were the culprits in the guise of passengers, they killed the deceased and left the dead body in a lonely place. The employment of the deceased under the owner is not disputed and his murder while in employment as driver of the vehicle is also not disputed. Law is well settled that if the employee is murdered in connection with his employment while discharging his duties, the same is covered within the purview of Employees' Compensation Act to get compensation. In the case of ***Smt.Rita Devi and Ors. Vs. New India Assurance Co. Ltd.,(2000) 5 SCC 113,*** the Supreme Court has held:

> “10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that murder, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.
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> .. .. XX .. .. XX .. ..
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> 14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw. XX .. ..”

6. Therefore, no such force remains in the contention of Mr.Khan not to treat this as an accidental death.

7. So far as the submission regarding fake D.L. is concerned, it is seen that the document under Ext.A has been adduced from the side of the Insurer to support the evidence of O.P.W.1, the Dy.Manager of the Insurance Company that the deceased possessed a fake D.L. Nonetheless, no material is brought on record to the effect, whether the owner had knowledge of possession of fake D.L. by the deceased and he deliberately allowed the deceased to drive the vehicle without testing his competency. In absence of such materials and in absence of any rebuttal evidence with regard to incompetency of the deceased to drive the Scorpio vehicle, and applying the principles decided in the case of ***National Insurance Co. Ltd. vrs. Swaran Singh and others, (2004) 3 SCC 297 and Nirmala Kothari vrs. United India Assurance Company Ltd., (2020) 4 SCC 49,*** the Insurer is granted right of recovery of the compensation amount from the owner.

8. A further challenge is advanced from the side of the Insurer-Appellant questioning the quantum of compensation. Mr.Khan contends that remuneration of the deceased as the driver should be limited to the count of the minimum wages prevailing on the date of accident. This submission of Mr.Khan has no force.

It is for the reason that the Tribunal has restricted the income of the deceased at Rs.8,000/- keeping in view the prescription made in Section 4 of the Employees' Compensation Act against the claim of the applicant about remuneration of the deceased at Rs.9,000/- per month plus Rs.50/- per day towards food allowance.

9. Considering the date of accident and normal wages paid to a driver, no such unusuality or excessiveness is seen in the assessment of income made by the Tribunal. Therefore, the sum of Rs.8000/- as taken by the Tribunal towards remuneration of the deceased is confirmed. Further, no such illegality is seen in the computation of the compensation amount which is determined applying the age factor '184.17'. It needs to be mentioned here that the age of the deceased as forty years is never disputed by the Insurance Company.

10. The claimant-Respondent No.1 has filed cross-objection for enhancement of the compensation amount and to grant interest on the same. As per the claimant, she is entitled to interest @12% per annum from the date of accident.

11. In the case of ***Pratap Narain Singh Deo vs. Srinivas Sabata and another, AIR 1976 SC 222*** and ***Kerala State Electricity Board & another vs. Valsala K. & another, AIR 1999 SC 3502***, the position has been settled that the interest is payable on the compensation amount from the date of accident. This Court also in the case of ***Senior Divisional Manager, National Insurance Company Ltd. vs. Suresh Kumar Behera and another, 2019 (2) T.A.C. 461 (Ori.)*** have clarified the position upon an elaborate discussion of the decisions of the Supreme Court. This Court also in FAO No.535 of 2014, disposed of on 4th May, 2022 have reiterated the principle holding that the interest is payable on the compensation amount from the date of accident. In view of such authoritative pronouncements, the claimants are found entitled to interest @12% per annum from the date of accident.

12. The appeal is thus disposed of with a direction to the Insurer to pay the total compensation amount of Rs.7,36,680/- along with interest @12% per annum from the date of accident, i.e. 30th August, 2014, where-after the same shall be disbursed in favour of the claimant by the Commissioner on such terms and proportion to be suitably fixed.

13. At this stage, it is submitted that the entire compensation amount has already been deposited before the Commissioner in terms of its direction. Thus, the Insurer-Appellant is directed to deposit the balance amount towards interest before the Commissioner in terms of the direction of this Court within a period of two months from today.

(B.P. Routray)
Judge

C.R.Biswal