

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 368 of 2014**

1. Reeta Devi
 2. Sonali Kumari
 3. Sonam Kumar
 4. Sheru Kumar
 5. Bahadur Ram
 6. Tara Devi
- Appellants

Versus

1. Miss Sima Devi
2. United India Insurance Company Doranda, Ranchi Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

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|-------------------------|-----------------------------|
| For the Appellants | : Mr. V.K. Sharma, Advocate |
| For the Respondent no.1 | : Mr. Sabyasanchi, Advocate |
| For the Respondent no.2 | : Mr. D.C. Ghosh, Advocate |

C.A.V. ON 02.02.2022

PRONOUNCED ON 04 .02.2022

1. The instant appeal has been filed under Section 30(1) of the Workmen's Compensation Act, 1923 (hereinafter called EC Act) by the claimants for enhancement of compensation amount awarded in W.C. Case No.11 of 2008.

2. Reeta Devi and others filed the case for compensation under Employees Compensation Act for the death of Ramesh Prasad during the course of his employment as the driver of Commander Jeep bearing registration No.J.H.01-C-9354. The owner of the vehicle Seema Devi and insurer Union of India Insurance Co. Ltd have been impleaded as O.P. Nos.1 and 2. The claimant No.1 is the wife of deceased whereas claimant Nos. 2 to 4 are her daughters and sons, whereas claimant Nos. 5 and 6 the mother of the deceased.

3. As per the case of the claimants, the deceased had monthly salary of Rs.3500/- and was also paid Rs.80/- per day as food allowance and was 24 years old at the time of the accident.

4. The learned Court of Labour Commissioner accepted the income of Rs.4000/- per month and awarded compensation of Rs.4,39,900/- with simple interest @ 7% per annum against the owner of the vehicle O.P. No.1 on the ground that the vehicle was under the cover of insurance for a private car and not a commercial vehicle. The learned Court below has stated in the Judgment that it had been argued on behalf of the Insurance Company that neither charge-sheet nor OD claim was filed by the claimant/opposite party

No.1, goods were being carried in the private vehicle which constituted a breach of the policy of Insurance.

5. Learned counsel appearing on behalf of the owner of the vehicle contends that no evidence has been led on behalf of the Insurance Company (O.P. No.2) that the vehicle was being used for commercial purpose and merely on the basis of bald assertions and argument advanced on behalf of the O.P. No.2 the owner has been saddled with liability to pay the compensation when admittedly the vehicle in question was under the insurance cover of O.P. No. 2.

6. Learned Counsel on behalf of the Insurance Company has argued that owner of the vehicle has neither preferred an appeal nor has preferred cross-objection to the instant appeal against the finding of the learned Court below for awarding the compensation against the owner of the vehicle.

7. Admittedly the vehicle which met with the fateful accident was under the insurance cover of O.P. No.2. There is nothing on record to suggest that O.P. No.2 led any evidence in support of its assertion that vehicle was being used for commercial purpose in breach of terms of insurance policy. Arguments of a party can be accepted only if it has a foundation of assertion and is duly proved. In the absence of any evidence on this point, finding of the learned lower Court that the vehicle was being plied for commercial purpose being in violation of the terms of insurance policy, renders the Judgment perverse on this point and is accordingly set aside. In view of the fact that the vehicle was under insurance cover therefore the insurer shall be liable to pay the compensation.

8. It is argued on behalf of the appellants that under Section 4 A (3)(a) the EC Act 12% simple interest per annum from the date of accident is the applicable rate of interest, whereas interest @ of 7% has been awarded. It is further argued that food allowance constitutes part of wages which has also not been reckoned with while awarding the compensation.

9. The scope of adjudication of appeal filed under Section 30 of the EC Act, 1923 is limited one which provides that no appeal shall lie against any order unless the substantial question of law is involved in the appeal.

10. This appeal has been admitted to be heard on the following substantial questions of law:

- i. Whether the interest at the rate of 7% awarded by the Workmen Commissioner is tenable in law in view of Section 4-A (3)(a) of the EC Act?
- ii. Whether food allowance will come within the definition of wages under Section 2(m) of the EC Act?

11. Going by the definition of wages as given under Section 2 (m) of the EC Act the contention of the Insurance Company that food allowance of Rs.80 per day shall not constitute part of wages is not tenable. A plain reading of the definition of the wages will show that given definition is wide enough to include the food allowance. The definition reads as under,

“(m) “wages” includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a [employee] towards any pension or provident fund or a sum paid to a [employee] to cover any special expenses entailed on him by the nature of his employment”

From the above definition of wages it is manifest wages includes any privilege or benefits which is capable of being estimated in money. It has come in evidence that Rs.80/ per-month was paid to the employee apart from monthly salary of Rs.3,500/-.

12. Under the circumstance, the admissible compensation will be computed on the basis of monthly wages of Rs.3,500 + Rs.80x 26= Rs.5,580

Taking Rs.5,580/- as monthly income of the deceased the final compensation shall work out to Rs. 219.95 x Rs. 2,790= Rs.6,13,660/-.

The claimants shall be entitled to compensation of Rs.6,13,660/- with interest @ 12% per annum from the date of accident from the Insurer of the vehicle O.P. no.2.

In the result the appeal stands allowed as noted above.

(GAUTAM KUMAR CHOUDHARY, J.)

Jharkhand High Court, Ranchi
Dated the 4th February, 2022
NAFR / A.K.T.