

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**FAO No.480 of 2012**

(From the judgment dated 17<sup>th</sup> February, 2012 of learned Commissioner for Employee's Compensation, Berhampur, Ganjam passed in W.C. Case No.50 of 2001)

***Smt. Renuka Sethi and Others*** .... ***Appellants***

***-versus-***

***Babu Sahu and Another*** .... ***Respondents***

Advocate(s) appeared in this case:-

For Appellants : Mr. Kalpataru Panigrahi, Advocate

For Respondents : Mr. Jayasankar Mishra, counsel for Respondent No.2

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

**JUDGMENT**

***1<sup>st</sup> February, 2023***

***B.P. Routray, J.***

1. The matter is taken up through hybrid mode.
2. Heard Mr. K. Panigrahi, learned counsel for the claimant – Appellants and Mr. J. Mishra, learned counsel for insurer – Respondent No.2.

3. Present appeal by the claimants is directed against impugned judgment dated 17<sup>th</sup> February, 2012 of learned Commissioner for Employee's Compensation, Berhampur, Ganjam passed in W.C. Case No.50 of 2001, wherein compensation to the tune of Rs.1,22,310/- has been granted on account of death of deceased Purushottam Sethi arising out of and in course of his employment as coolie in the truck bearing registration number OR 16 2078.

4. The Commissioner has directed the owner to pay the compensation amount by exempting the insurer from the liability. This is challenged by the claimants. Mr. Panigrahi, learned counsel for the claimants submits that when the validity of the insurance policy is not disputed and the cover note was issued on 25<sup>th</sup> January, 2000 at 2 pm, the insurance company cannot wash its hands from the liability.

5. The sole dispute remains in the present appeal that, as to from which date and time the insurance coverage would be treated effective in respect of the vehicle in question. As per the cover note produced on record (Cover Note No.706757), it has been issued on 25<sup>th</sup> January, 2000 at 2 pm and the accident took place on 25<sup>th</sup> January, 2000 at 4pm. Learned counsel for the insurance company does not dispute issuance of the cover note on 25<sup>th</sup> January, 2000 at 2 pm and no dispute is also raised with regard to the timing of the accident, i.e. at 4pm on 25<sup>th</sup> January, 2000. Admittedly, the corresponding policy issued in respect of said cover note has been stated to be effective from 27<sup>th</sup> January, 2000.

6. Mr. Panigrahi while submitting his case relies on a decision of the Supreme Court rendered in the case of *Oriental Insurance Co. Ltd. v. Dharam Chand @ Others, 2011 (1) OLR (SC) 103* to substantiate his contention that the effectiveness of the policy should be deemed to have commenced from the time of issuance of the cover note.

7. On the contrary, Mr. Mishra, learned counsel for the insurance company relies on a decision of the Madras High Court dated 3<sup>rd</sup> March, 2022 rendered in CMA No.3291 of 2017 and CMP No.20764 of 2017 to contend that the policy coverage would operate only from the date and time mentioned in the policy and not prior to that.

8. In the case of *Dharam Chand* (supra), the Supreme Court have stated that from the time the premium amount was received, the insurance coverage must be deemed to have commenced from that time.

9. The case of Madras High Court as cited by Mr. Mishra for the insurance company, the same is found distinguishable on the present facts of the case since in that case no cover note was issued and the accident took place two days prior to issuance of the insurance policy.

10. In terms of Section 64-VB of the Insurance Act, the risk on the part of the insurer commences on receipt of payment of premium from the insured.

11. In the case at hand, the insurance policy bearing No. 034302/31/021/11/07201/1999 was issued mentioning the effective date from 00:00 hours on 27<sup>th</sup> January, 2000 to 26<sup>th</sup> January, 2001. But the cover

note as stated above has been issued on 25<sup>th</sup> January, 2000 at 2 pm and it is clearly mentioned in the cover note that premium of Rs.3012/- in respect of the vehicle in question have been paid and received. Therefore, in terms of Section 64-VB of the Insurance Act and the observation given by the Supreme Court in the case of ***Dharam Chand*** (supra), it is held in the present facts of the case that, the insurance coverage commenced from 2 pm on 25<sup>th</sup> January, 2000 as mentioned in the cover note. When the accident took place at 4pm, i.e. 2 hours after the cover note was issued and premium received, undoubtedly the liability of the insurer cannot be absolved.

12. Mr. Panigrahi further contends that the Commissioner has committed further error by not granting interest on the compensation amount and observed that the interest would be payable only on default of payment of compensation within the specified time. The law is well settled in the case of ***Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289*** that the interest on the compensation amount is payable from the date of accident. As such, this court is of the opinion that the claimants are entitled for interest on the compensation amount @ 12% per annum from the date of accident.

13. In the result the appeal is allowed and the insurer – Respondent No.2 is directed to pay the compensation amount of Rs.1,22,310/- on behalf of the owner as directed by the Commissioner along with interest @ 12% per annum from the date of accident, and shall deposit the entire amount within a period of two months from today, which shall be disbursed in favour of the claimant – Appellants on such terms and proportion to be decided by the learned Commissioner.

14. The copies of cover note and insurance policy as produced in course of hearing are kept on record.

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

*( B.P. Routray )*  
*Judge*

M.K.Panda

