



IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.189 of 2025 & FAO No.310 of 2025

(From the judgment dated 18th March, 2025 passed by the Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Dhenkanal in E.C. Case No.09 of 2019)

FAO No.189 of 2025

<i>Sukanti Nayak & others</i>		<i>Appellants</i>
	-versus-	
<i>Udaya Vanu Das & Ors.</i>		<i>Respondents</i>

FAO No.310 of 2025

<i>Divisional Manager, Oriental Insurance Co. Ltd, Sahid Nagar, Bhubaneswar</i>		<i>Appellant</i>
	-versus-	
<i>Sukanti Nayak & Ors.</i>		<i>Respondents</i>

Advocate(s) appeared in both the cases:-

For Appellants	: Mr. A.S. Nandy, Advocate in FAO No.189 of 2025 & Mr. Pramod Kumar Tripathy, Advocate in FAO No.310 of 2025
For Respondents	: Mr. Pramod Kumar Tripathy, Advocate for Respondent No.2 in FAO No.189 of 2025 & Mr. A.S. Nandy, Advocate for Respondents No.1 to 4 in FAO No.310 of 2025



CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
21st July 2026

B.P. Routray, J.

1. Heard Mr. A.S. Nandy, learned counsel for the claimants and Mr. P.K. Tripathy, learned counsel for the insurer.
2. Both the appeals, one filed by the claimants and the other filed by the insurance company, being arise out of the same impugned award of the learned Commission for Employees Compensation-cum-Divisional Labour Commissioner, Dhenkanal passed in E.C. Case No.9 of 2019, are heard together and disposed of by this common judgment.
3. The facts of the case are that, the deceased namely, Srikanta Nayak was serving as helper in respect of the vehicle bearing registration No.OD-06-C-9930 (Tata Truck 407) under one Udaya Bhanu Das, the owner. On 17th December, 2018 the driver of the vehicle along with the deceased while returning from Kankadahada to Dhenkanal after unloading the cement, on the way as the diesel tank of the vehicle became empty, the deceased as per instruction of the driver went to Kankadahada to bring diesel for the vehicle and on the way another



unknown vehicle dashed against the deceased causing his death. The dead body of the deceased was sent for postmortem examination on 18th December, 2018 and in connection with death of the deceased, Kankadahada P.S. Case No.73 of 2018 was registered. As the deceased died in course of his employment and arising out of the same, present claimants, who are the wife and children of the deceased, have filed E.C. Case No.9 of 2019 claiming compensation. The learned Commissioner vide award dated 18th March, 2025 allowed the claim application and directed for payment of compensation to the tune of Rs.14,27,150/- (including the interest). This impugned award of the Commissioner dated 18th March, 2025 is assailed by both the claimants and the insurer.

4. The claimants have prayed for enhancement of the compensation amount by contending that the monthly wage of the deceased should have been calculated at Rs.10,000/- (rupees ten thousand) only per month without any reduction thereof. Conversely, the insurer contends that the learned Commissioner has unnecessarily taken the income of the deceased on higher side without any supporting material thereof and further, computed the age of the deceased as 32 years instead of 35 years as mentioned in the post mortem report. It is further submitted by Mr. Tripathy, learned counsel for the insurer, that without any supporting



material to admit the wage of the deceased at Rs.8000/- (rupees eight thousand only), the same cannot be accepted for determination of compensation for death of the deceased, who was working as a helper.

5. It is seen that neither the owner nor the insurer did adduce any oral evidence by examining their witnesses, whereas applicant No.1 who is the wife of the deceased examined herself as P.W. 1 in support of the claim of the applicants. Besides the oral evidence given by P.W.1, the claimants also relied on Ext.1 to Ext.4 series. Further, the insurer did not adduce any documentary evidence in support of its stand.

6. As per the contentions of the claimants the deceased was getting Rs.10,000/- (rupees ten thousand) only per month as his wage from the owner of the vehicle. This part of the statement of claimants as stated by P.W.1 is supported by the owner in his written statement, supported with affidavit. The owner has stated in his written statement that he was paying wage of Rs.10,000/- (rupees ten thousand) only per month to the deceased who was working as the helper of the vehicle. Such statement made by the owner in his written statement is never rebutted or disputed by the insurance company. Moreover, the insurance company did not choose to adduce evidence on its behalf either orally or documentary.



7. It is well settled that admission does not require any proof. The statement made by the owner in the written statement with regard to the wage given to the deceased is truly an admission on his part that supports the contention of the claimants. So far as the insurer is concerned, it neither disputed the same nor did produce any material evidence to counter such statement of the owner. Thus, the contention of the claimants with regard to the wage of the deceased being found supported by the statement of the owner is seen acceptable as genuine. Otherwise also it is normal on the part of a helper of a truck to receive such amount towards the wage for working as helper in a truck in the relevant year. It cannot be considered as exaggeration even from the point of minimum wages prescribed for an unskilled labourer prevalent at the relevant time.

8. The learned Commissioner while determining the income of the deceased relied on the notification dated 31st May, 2010 of the Ministry of Labour & Employment to conclude that the monthly wage of the employee for the purpose of calculation of compensation under Section 4 of the Employees' Compensation Act has been specified to Rs.8000/- per month. Such observation of the learned Commissioner is completely erroneous for the reasons that said notification dated 31st May, 2010 read with notification dated 18th January, 2010 implies that the Government



may by notification specify for the purpose of sub-Section (1) of Section 4 in relation to an employee as it may consider necessary and the amount of monthly wages were prescribed at Rs.8000/-. This Court while interpreting the notification dated 18th January, 2010 and 31st May, 2010 in ***Divisional Manager, Oriental Insurance Co. Ltd. v. Kuna Behera and another, 2024(I) ILR-CUT-1278*** have held as follows:-

"9. So from the above analysis and discussions it becomes clear that the actual monthly wage of an employee is to be taken into account in determining the compensation amount. The actual monthly wages has to be brought on record by way of acceptable evidence. If the evidences and materials are unclear to determine the actual monthly wages, then the prescription of minimum wage rate during that relevant period read with the amount notified by appropriate government under Section 4(1-B) of the E.C. Act, is to be followed for determining the compensation amount."

9. Therefore, in the instant case taking note of the evidence of P.W. 1 and the statement of the owner made in his written statement, it can safely be concluded that, what is borne out of the record is that the deceased was receiving Rs.10,000/- per month towards his wage and thus, reduction of the same made by learned Commissioner limiting it to Rs.8000/- is not justified. Accordingly, the monthly wage of the deceased is taken at Rs.10,000/- per month.



10. So far as the dispute with regard to age of the deceased is concerned, though it is true that as per the postmortem report the same is mentioned as 35 years but at the same time, the Aadhaar Card of the deceased reveals his age to be 32 completed years. Though the Aadhaar Card has not been marked as an exhibit by the Commissioner but in his observation at Issue No.3, the learned Commissioner has observed the age of the deceased as 32 completed years on the date of accident based upon the Aadhaar Card. Such finding of learned Commissioner is not rebutted or challenged in the present appeal by disputing the Aadhaar Card of deceased and thus, such observation of learned Commissioner is found undisputed to determine the age of the deceased for the purpose of computing compensation.

11. So, the insurer is not able to submit any justifiable ground in their support to reduce the compensation amount. But considering the submissions made on behalf of the claimants and the materials thereof, this Court is inclined to increase the monthly wage of the deceased to Rs.10,000/- keeping the age of the deceased as 32 completed years. The age factor so applies is 203.85. The compensation is accordingly computed at Rs.10,19,250/- (50% of wage of Rs.10,000/- per month X

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203.85, i.e. Rs.5000/- X 203.85 = Rs.10,19,250/-), payable along with interest @ 12% per annum from the date of accident.

12. In the result, both the appeals are disposed of with a direction to the insurer to pay the modified compensation of Rs.10,19,250/- (rupees ten lakh nineteen thousand two hundred fifty) only along with interest @ 12% per annum from the date of accident, i.e. 17th December, 2018 till the award amount was deposited before the Commissioner. It is further observed that the total amount deposited before learned Commissioner may be released in favour of the claimants and the balance differential amount shall be deposited by the insurer within a period of two months from today, which shall be released immediately after deposit of the same in favour of the claimants.

(B.P. Routray)
Judge

MKP,PA/PKS,PA