

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No. 205 of 2024

Along with

FAO No.292 of 2024

(Appeals under Section 23 of the Railway Claims Tribunal Act, 1987)

(In FAO No. 205 of 2024)

Janardan Palei & Anr.

....

Appellant (s)

-versus-

Prafulla Ku Pradhan & Anr.

....

Respondent (s)

Advocates appeared in the case through Hybrid Mode:

For Appellant (s)

:

Mr. Biranchi Narayan Rath, Adv.

For Respondent (s)

:

Mr. Somnath Roy, CGC.

(In FAO No. 292 of 2024)

The Deputy Manager,

....

Appellant (s)

M/S Oriental Insurance Co. Ltd

Regional Office

-versus-

Janardan Palei & Ors.

....

Respondent (s)

Advocates appeared in the case through Hybrid Mode:

For Appellant (s)

:

Mr. Somnath Roy, CGC.

For Respondent (s)

:

Mr. Biranchi Narayan Rath, Adv.



**CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI**

DATE OF HEARING:-21.01.2026
DATE OF JUDGMENT:-17.04.2026

Dr. Sanjeeb K Panigrahi, J.

1. Since common questions of fact and law are involved in the above-mentioned appeals, the same were heard together and are disposed of by this common judgment. For the sake of convenience, FAO No.205 of 2024 is treated as the leading case.
2. The present First Appeal (FAO NO.205 of 2024) has been filed by the appellants assailing the order passed by the Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Odisha, Bhubaneswar, in E.C. Case No.44 of 2017, whereby directed the Opposite Party No.2/The Deputy Manager, M/s. Oriental Insurance Company Ltd. to deposit a sum of Rs.14,94,651/- in the court below within 30 days from the date of receipt of the order for onward disbursement to the applicant failing which the Opposite Party No.2 shall be liable to pay 50% penalty with interest @ 12% per annum on the total warded amount.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts of the case are as follows:
 - i. It is the case of the appellants that on 08.06.2017 at about 6 P.M., the deceased, while discharging his duty as a driver in a Bolero bearing Registration No.OD-02-T-7029 met with an accident near Pitnali Chhak under Telkoi Police Station of Keonjhar district



vide P.S. vide P.S. Case No.68/2017 under Section 279/304 (A) IPC. The deceased Suresh Ch. Palei was aged about 36 years old and was getting Rs. 8,000/- per month as wages from Opposite Party No.1 at the time of the accident.

- ii. The appellants filed E.C. Case No.44 of 2017 before the Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Odisha, Bhubaneswar, seeking compensation of ₹8,00,000/- on account of the death of one Suresh Chandra Palei.
- iii. Being aggrieved by the judgment dated 24.04.2024 passed by the Commissioner, the appellants have preferred the present appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANTS:

- 4. Learned counsel for the appellants earnestly made the following submissions in support of his contentions:
 - i. The appellants are entitled to get Rs.16,00,000/-. But, the learned Commissioner has awarded Rs.14,94,651/-. Hence, the present appeal is preferred for enhancing of the balance amount of Rs.1,05,349/-.
 - ii. While calculating the compensation, the food allowance of Rs.100/- per day given to the deceased should have been included in the monthly salary of the deceased.
 - iii. The appellants, being the parents of the deceased, have not received any compensation within one month from the date of the accident. Hence, the learned Commissioner should have awarded 50% penalty along with the compensation.



III. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.2:

5. Learned counsel for the respondent No.2 earnestly made the following submissions in support of his contentions:
- i. The learned Commissioner has erroneously held that the deceased had died while discharging his duty as a driver in Bolero bearing Registration No.OD-02-T-7029 under the employment of Respondent No.1. When the F.I.R lodged by the brother of the deceased before the Telkoi P.S, the deceased was working under one Contractor of Adarsh Vidyalay named Raja Jaiswal. On 08.06.17, while the deceased was riding a Motorcycle bearing Registration No.OD-09-F-006,1, belonging to the said Raja Jaiswal, he met with an accident near PitnaliChhaka and sustained injuries. It is crystal clear that there was no employer and employee relationship between the Respondent No.1 and the deceased. The Respondents/claimants have connived with the Respondent No.1. The appellant No.1/Insurance Company to grab illegal compensation.
 - ii. The learned Commissioner has erred in law in holding the deceased to be working under the employment of Respondent No.1, and his death arose out of and in the course of his employment as a driver in Bolero bearing Registration No.OD-02-T-7029, particularly when the police, after investigation has submitted Final Form and the Final Form clearly reflects that the deceased was working as a driver of one Raja Jaiswal, a contractor of Adarsh Bidyalay Hostel and on 08.06.17, while the



deceased was going to Telkoi riding a Yamaha Motorcycle bearing Registration No.OD-09-F-0061, he met with an accident resulting in his death, for which the police have submitted Final Form as FR abated against the deceased rider Suresh Chandra Palei, which clearly proves that the deceased was not in any way connected with the employment as a driver under Respondent No.1 in Bolero bearing Registration No.OD-02-T-7029.

The learned Commissioner has committed error in holding the deceased to be working under Respondent No.1 particularly when the claimants/Respondent as well as the Respondent No.1 have failed to produce any documentary evidence such as employment register to prove the employment, wage of the deceased for which master and servant relationship between the Respondent No.1 and the deceased was not established as such the impugned judgment is liable to be set aside.

IV. FINDINGS OF THE COMMISSIONER FOR EMPLOYEE'S COMPENSATION-CUM-JOINT LABOUR COMMISSIONER:

6. The learned Commissioner, upon hearing the parties and considering the materials on record, framed the following issues for determination:
 - a) Whether the deceased is a workman within the meaning of W.C. Act, 1923.
 - b) Whether the accident arose out of and in course of the employment under the Respondent No.1 ?
 - c) Whether the Applicants are entitled to get the compensation as claimed by them or any part thereof?



d) Whether the opposite parties are liable to pay the compensation in this case and if so by whom the compensation is payable ?

7. The Respondent No.1 has not paid compensation to the applicants because his alleged vehicle bearing Registration No.OD-02-T-7029 was validly insured with the Respondent No. 2/Insurance Company vide Insurance Policy No. 345505/31/2017/6267, valid up to 14.01.2018, covering the date of the accident and the risk of the deceased driver of the alleged vehicle, and as such, it is the liability of the Respondent No. 2 to pay the same.
8. The learned Commissioner held that the Respondent No.1 who is primarily liable to pay compensation to the applicants, to be indemnified by the Respondent No.2/Insurance Company, the insurer of the alleged vehicle bearing Registration No.OD-02-T-7029 as per indemnify clause of the insurance policy. Hence, the Insurance Company is liable to pay to entire compensation amount to the workmen as awarded.

V. COURT'S REASONING AND ANALYSIS:

9. Having heard learned counsel for the parties and upon a careful perusal of the materials available on record, this Court proceeds to examine the correctness and legality of the impugned award passed by the learned Commissioner under the Employees' Compensation Act.
10. At the outset, the foundational issue which arises for determination is whether the deceased, namely Suresh Chandra Palei, can be said to be a "workman" under the employment of Respondent No.1 and whether the

accident in question arose out of and in the course of such employment. The existence of employer–employee relationship is not a mere formality but constitutes the very substratum of a claim under the Employees’ Compensation Act. In absence thereof, the entire edifice of compensation collapses.

11. In the present case, the claimants have asserted that the deceased was engaged as a driver of a Bolero vehicle bearing Registration No. OD-02-T-7029 under Respondent No.1 and was receiving a monthly wage of Rs.8,000/-. However, significantly, no documentary evidence such as appointment letter, wage register, attendance register or any contemporaneous record has been produced to substantiate such claim. The bald assertion of employment, unsupported by cogent evidence, cannot be accepted as proof of a jural relationship of master and servant
12. On the contrary, the materials brought on record by the Insurance Company, particularly the police records and final form submitted in connection with Telkoi P.S. Case No.68/2017, indicate that the deceased was, at the relevant time, riding a motorcycle belonging to one Raja Jaiswal, a contractor of Adarsh Vidyalaya, and met with the fatal accident in that capacity. This circumstance casts serious doubt on the version advanced by the claimants and renders the case set up before the Commissioner inherently doubtful.
13. The learned Commissioner, while arriving at the conclusion regarding the existence of employer–employee relationship, appears to have proceeded on assumptions rather than legal evidence. The approach

adopted suffers from a fundamental infirmity inasmuch as it overlooks the settled principle that the burden of proving employment squarely lies upon the claimants. In compensation jurisprudence, though a liberal approach is warranted, such liberal view cannot extend to dispensing with proof of essential facts.

14. Equally important is the requirement that the accident must arise “out of and in the course of employment.” Even assuming arguendo that the deceased had some association with Respondent No.1, the evidence on record does not establish that the accident occurred during the discharge of his duties as a driver of the said Bolero vehicle. The police investigation, which culminated in submission of final form, clearly attributes the accident to the deceased while riding a different vehicle, thereby severing any nexus with the alleged employment.
15. In view of the above, this Court finds that the learned Commissioner has committed a manifest error in law in holding that the deceased died in the course of his employment under Respondent No.1 and in fastening liability upon the Insurance Company. The finding is not only unsupported by evidence but is also contrary to the materials on record
16. Coming to the issue of quantum, the question of enhancement of compensation or inclusion of additional components such as food allowance would arise only if the foundational requirement of liability is established. Once it is held that the claim itself is not maintainable for want of proof of employment, the question of recalculation or enhancement becomes wholly academic.



17. Similarly, the claim for imposition of penalty under the Act is contingent upon unjustified delay in payment of compensation by the employer. In the present case, where the very liability to pay compensation is not established, no question of penalty arises.

VI. CONCLUSION:

18. For the reasons discussed hereinabove, this Court is of the considered opinion that the impugned order passed by the learned Commissioner suffers from serious legal infirmities and cannot be sustained in the eye of law. Accordingly, the appeal preferred by the Insurance Company deserves to be allowed, and the award of compensation passed in E.C. Case No.44 of 2017 is hereby set aside.

19. Consequently, the claim application filed by the claimants stands **dismissed**. In the facts and circumstances of the case, however, there shall be no order as to costs.

20. Accordingly, both the FAOs are disposed of.

(Dr. Sanjeeb K Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 17th April, 2026/-*