A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

F.A.O. No. 272 of 2016

(In the matter of an Appeal under Section 30(1) read with Section 30(aa) of the Workmen's Compensation Act, 1923.

Director, Interim Test Range (ITR), Chandipur .... ***Appellant (s)***

-versus-

Sk. Harash Uddin and Ors. .... ***Respondent (s)***

Advocates appeared in the case through Hybrid Mode:

For Appellant (s) : *Mr. Karunakar Nayak, Sr. P.C.*

For Respondent (s) : *Mr. B. Singh, Adv.*

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-27.11.2025
DATE OF JUDGMENT:-12.12.2025

Dr. Sanjeeb K Panigrahi, J.

1. In this appeal, the ppellant seeks a direction from this court to set aside the order dated 22nd March, 2016 of the Commissioner for Employees Compensation and Assistant Labour Commissioner, Balasore in E.C. Case No.03 of 2011, holding that no liability can be fastened on Opp. Party No.2, and dismiss the claim as not maintainable against it.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The Respondent Nos. 1, 2 and 3 filed E.C. Case No. 3 of 2011 before the Commissioner for Employees' Compensation-cum-Assistant Labour Commissioner, Balasore, seeking compensation in connection with the death of Sk. Sajiduddin, who had been working on a forklift machine at the Interim Test Range (ITR) on 02.12.2010 at around 6 p.m.

(ii) The claimants described themselves as dependants of the deceased and stated that he had been functioning in the capacity of a Fitter Mechanic at the relevant time. It was stated in the proceedings that the deceased had been engaged through Opp. Party No. 1, a contractor, who had entered into an agreement with Opp. Party No. 2, the Director, Interim Test Range, on 20.08.2010, with the contractual period extending from 10.09.2010-10.09.2011.

(iii) During the pendency of the compensation claim, Opp. Party No. 2 filed objections, asserting that the deceased had been engaged by the contractor and raising contentions regarding the circumstances in which the accident occurred, including the manner in which the repair work of the forklift machine was being undertaken. The materials placed before the Commissioner included documents relating to the employment arrangement, the contract between Opp. Party No. 1 and Opp. Party No. 2, and records pertaining to the incident dated 02.12.2010.

(iv) Upon consideration of the evidence presented by all parties, the Commissioner for Employees' Compensation passed a judgment on 22.03. 2016 directing payment of compensation quantified at

₹6,55,410/-, with a further direction regarding interest in case of delayed deposit. Opp. Party No. 2, being dissatisfied with the said judgment, filed the present appeal challenging the findings recorded by the Commissioner.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

3. Learned counsel for the Appellant earnestly made the following submissions in support of his contentions:

(i) The appellant assails the impugned order on multiple grounds, contending at the outset that the claim petition itself was not maintainable against Opp. Party No. 2. It is argued that the claimants had no cause of action under Rule 20, Form G of the Employees' Compensation Act, 1923, and that the proceedings suffered from misjoinder of parties, as Opp. Party No. 2 was not connected with the employment of the deceased. According to the appellant, there existed no employer–employee relationship between Opp. Party No. 2 and Sk. Sajiduddin.

(ii) It is submitted that the repair and maintenance work of the Material Handling Group (MHG) equipment of ITR, Chandipur was being executed under a contract dated 20.08.2010 between the President of India, represented by the Director, ITR, and M/s Ashalata Enterprises. Under the terms of this agreement, the contractor was solely responsible for engaging workers and for any injury, incident, loss of life or damage arising during the execution of the work. Reliance is placed on Clause 11 and other general terms and conditions of the contract to contend that ITR authorities were expressly insulated from liability for any harm sustained by contractor's employees. Thus, responsibility for any loss or injury to the deceased, who was admittedly working under the contractor, could not be fastened upon the appellant.

(iii) The appellant further argues that the Commissioner failed to determine whether the claimants were "dependants" within the meaning of Section 2(d) of the Employees' Compensation Act, 1923, thereby rendering the award unsustainable. It is submitted that although the Commissioner quantified compensation at ₹6,55,410/– instead of ₹7,00,000/– as claimed, the finding that Opp. Party No. 2 was the "principal employer" liable to pay compensation under Section 3 of the Act was erroneous.

(iv) The appellant additionally contends that Section 12(2) of the Employees' Compensation Act, which entitles a principal employer to be indemnified by the contractor, was not properly considered. The Commissioner failed to record findings regarding indemnity and proceeded to invoke Section 4A(3) relating to default in payment of compensation without any basis for such invocation. The award of interest at 12% has also been challenged as arbitrary and contrary to the statutory requirements.

(v) Reiterating that the deceased was an employee of the contractor alone and that the terms of the agreement clearly place all responsibility for loss, injury or damage upon the contractor, the appellant submits that the impugned order is unsustainable.

III. ANALYSIS AND REASONING OF THE EMPLOYEE'S COMPENSATION COURT:

(i) The Commissioner began by identifying the central questions requiring adjudication, namely whether the deceased, Sk. Sajiduddin, could be regarded as an employee within the meaning of the Employees' Compensation Act, 1923; whether his death on 02.12.2010 resulted from an accident arising out of and in the course of his employment as a fitter mechanic and whether such employment was under OP No.1 or OP No.2; what his age and wage were at the time of the incident; and, based on these determinations, what quantum of compensation was payable and upon whom the liability to pay such compensation would rest.

(ii) In addressing the first set of questions relating to the status of the deceased as a workman and the nature of the accident, the Commissioner held that the deceased was indeed a workman within the meaning of the Act and that his death occurred arising out of and in the course of his employment as a fitter mechanic. This conclusion was drawn from the testimony of PW-1, the father of the deceased, who stated that the deceased had been engaged as a fitter mechanic under OP No.1 and was repairing a forklift belonging to OP No.2 at Wheeler Island when the vehicle suddenly pressed upon him.

(iii) The Commissioner found this account corroborated by the police records placed on record, including the FIR, final report, inquest report, dead body challan and post-mortem report, and also referred to the Report of the National Human Rights Commission as supporting material. Further, although OP No.1 initially denied employment in his written statement, he admitted in his evidence that he was the proprietor of M/s Ashalata Enterprises and had been executing a contractual work order issued by OP No.2, which in the Commissioner's view established that the deceased had been engaged for the work being undertaken at the time of the accident.

(iv) Turning to the questions concerning age and wages, the Commissioner relied on the School Leaving Certificate (Ext. 6), which recorded the deceased's date of birth as 13.05.1986, and accordingly calculated his age as 24 years at the time of death. Since no documentary evidence of wages was produced by the petitioners, the Commissioner accepted OP No.1's statement that the deceased earned ₹200 per day and treated this as indicative of the prevailing wage of a fitter mechanic in 2010. On that basis, the Commissioner computed the monthly wage as ₹6,000. Applying Section 4 of the Employees' Compensation Act and the corresponding age factor of 218.47 as set out in Schedule IV, the Commissioner determined the compensation payable to be ₹6,55,410.

(v) In resolving the final question relating to liability for payment of compensation, the Commissioner accepted the submission made on behalf of OP No.1 that he had been executing the work of OP No.2 under a valid contract and that OP No.2 was therefore the principal employer in relation to the work being carried out. Proceeding on this premise, and considering that the accident had occurred during the execution of the work of OP No.2, the Commissioner held OP No.2 liable to pay the statutory compensation to the dependants of the deceased. The Commissioner accordingly directed OP No.2 to deposit the sum of ₹6,55,410 within 30 days, failing which simple interest at 12% per annum would accrue from the date of filing of the claim petition. The claim was thus allowed in part, and liability was fastened on OP No.2 in its capacity as principal employer.

IV. COURT'S REASONING AND ANALYSIS:

4. Heard Learned Counsel for the parties and perused the documents placed before this Court.

5. The sole issue is whether the Director, ITR (Opp. Party No.2) (principal employer) is liable to pay compensation under the Employees' Compensation Act, 1923 for the death of Sk. Sajiduddin, a contract workman engaged by M/s Ashalata Enterprises (Opp. Party No.1), and if so, whether such liability can be avoided by contractual stipulations. The Commissioner found that the deceased was a workman under the Act and died in the course of his employment on 2.12.2010 while repairing OP2's forklift on OP2's premises. These findings are supported by unchallenged evidence (testimony of PW-1 and official records) and are not attacked on appeal. Thus, it is accepted that the death was due to an accident arising out of and in the course of Sajiduddin's employment.

6. The appellant (OP2) contends that the claim against it is not maintainable because Sajiduddin was employed solely by the contractor (OP1) and not by OP2. It relies on the agreement (clause 11) immunizing OP2 from liability for contractor's workmen, and argues that the work (forklift repair) was outside OP2's ordinary business.

These contentions are untenable as a matter of law. Section 12(1) of the Act specifically provides that where a principal contracts for the execution of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him.

7. Here OP2 contracted with OP1 for the repair/maintenance of material handling equipment (forklifts) on its premises. Repairing the company's machinery is clearly part of OP2's ordinary operations, repair of a principal employer's machinery cannot be said to be outside 'ordinary work' of the company, and the principal could not escape liability. Accordingly, Section 12(1) plainly applies and OP2 must be treated as principal employer liable to pay compensation as if Sajiduddin were its own employee during that work.

8. It is settled that Section 12 is an enabling provision for the benefit of workmen and dependants. The legislative scheme is designed so that a workman is not hampered by technicalities or practical difficulties in identifying the correct employer. In fact, ***Sardar Sewa Singh v. Hindustan Level Ltd.***[1] the Court described Section 12 as a pragmatic method fixing liability on the principal employer for affording speedy relief to the workman, albeit subject to the principal's right of indemnity. The relevant excerpts are produced below:

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[1] 1980 (1) L.L.N. 566.

> *"Section 12 imposes the liability on the principal where several tiers of contractors or petty contractors are employed In Sardar Sewa Singh v. Hindustan Lever Ltd. (supra), the Allahabad High Court held Section 12 of the Workmen's Compensation Act to be an enabling provision for the benefit of the workmen enacted with a clear objective that the workmen should not be hampered by technicalities or practical difficulties of deciphering the correct employers. A pragmatic method has been advised for fixing the liability on the principal employer for affording speedy relief to the workmen for payment of compensation on account of the accident."*

9. In short, once the statutory conditions are met, the principal employer cannot avoid liability by any contract. Indeed, the Court has explicitly held that agreements between principal and contractor can govern only their inter se rights and cannot affect the right of the workmen or their dependents to get compensation either from the principal or from the contractor at their option, while confirming that the principal has a statutory right of indemnity under Section 12(2). Thus, OP2's reliance on clause 11 of the contract cannot defeat the claim: the contract cannot override the statutory right of the claimants to compensation from OP2 when Section 12 applies.

10. The Commissioner's conclusion that OP2 was the principal employer and therefore liable to pay compensation is, in this view, legally correct. The work being done (forklift repair on OP2 premises) fell squarely within OP2's business, and the accident occurred on OP2's site. OP2's argument that it had no employer–employee relationship with Sajiduddin misapprehends Section 12, which deems the principal "employer" for compensation purposes in such cases.

11. This Court notes that the compensation was computed on a wage of ₹6,000 per month with a multiplier of 218.47 for age 24, yielding ₹6,55,410. No evidence was led to dispute the assumed wage, which is reasonable for a fitter mechanic in 2010. The award on quantum is not challenged in substance by OP2 and does not require interference. The Commissioner also treated the wife and children of the deceased as dependants under Section 2(d). OP2 has not meaningfully pressed this ground.

12. On interest, Section 4A(3) makes payment of simple interest at 12 percent mandatory if the employer defaults in paying compensation within one month of it falling due. The Commissioner directed 12 percent interest from the date of filing. The law and the precedents make it clear that the interest must run from the date of the accident. The direction to impose 12 percent interest is therefore correct. OP2 is liable to pay the award with statutory interest. The objection that the rate is arbitrary cannot stand.

13. OP2's claim for indemnity from OP1 under Section 12(2) is sound. As the principal employer, OP2 must pay the claimants but is entitled to recover the amount from OP1, who engaged the deceased. The Commissioner did not record a specific finding on indemnity. We clarify that OP2 may recover any amount it pays to the claimants from OP1 under Section 12(2). This does not affect the award to the dependants and only determines ultimate responsibility between OP2 and OP1.

14. In sum, the appeal by OP2 must fail. Section 12 of the Employees' Compensation Act renders OP2 liable for Sajiduddin's death, regardless of the contract terms, and Section 12(2) provides OP2 the remedy of indemnity against OP1. The Commissioner's award of ₹6,55,410 plus 12% interest is legally sound. The order will therefore be upheld.

V. CONCLUSION:

15. The appeal is dismissed. The award of compensation (₹6,55,410 with interest at 12% per annum from the date it became due) in favour of the dependants of the deceased is confirmed.

16. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 12th December, 2025