



IN THE HIGH COURT OF ORISSA AT CUTTACK

A.F.R.

FAO No. 440 of 2025

(An appeal under Section 30 of the Employees' Compensation Act, 1923)

Asst. General Manager, M/s. Appellant (s)
Kalinga Commercial Corporation
Ltd., Keonjhar & Anr.

-versus-

Haramani Behera & Ors. Respondent (s)

Advocates appeared in the case through Hybrid Mode:

For Appellant (s) : Mr. Prabhu Prasad Mohanty, Adv.

For Respondent (s) : Mr. B.P. Tripathy, Adv.

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-19.11.2025

DATE OF JUDGMENT:-12.12.2025

Dr. Sanjeeb K Panigrahi, J.

1. The present First Appeal (FAO) has been instituted by the Appellants assailing the judgment dated 04.07.2025 passed by the learned Commissioner for Employees' Compensation-cum-Deputy Labour Commissioner, Cuttack in E.C. Case No. 341 of 2023.
2. The Appellants also challenge the subsequent order dated 03.09.2025 passed by the learned Commissioner under Section 12(2) of the Employees' Compensation Act, 1923.



I. FACTUAL MATRIX OF THE CASE:

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

- (a) Odisha Mining Corporation Limited (OMC), Opposite Party No. 3 before the learned Commissioner, is the lessee operating the Gandhamardan Iron Ore Mines situated at Suakati village in the district of Keonjhar, Odisha. The present Appellants, M/s. Kalinga Commercial Corporation Ltd., were engaged by OMC for carrying out raising operations in the said mines. For the purpose of execution of such work, the Appellants engaged certain workmen to undertake mineral-raising activities within the premises of the OMC mine.
- (b) The deceased, Sarbeswar Behera, was working as an operator under M/s. Kalinga Commercial Corporation Ltd. and had joined service on 28.03.2018.
- (c) On 03.10.2022, the deceased was assigned night-shift duty from 10:00 p.m. to 06:00 a.m. On the same day, at about 3:30 p.m., while riding his motorcycle bearing Registration No. OD-05-BC-2014 along with one Reena Mahakuda, he met with an accident involving an unknown truck near Jamudiha in the district of Keonjhar, Odisha.
- (d) Upon receipt of information regarding the accident from one Narayan Chandra Sahu, the police proceeded to the spot and arranged for shifting of both injured persons to Keonjhar Hospital by ambulance, where they were declared dead by the attending doctor. On 04.10.2022 at about 09:25 hours, a written report was



lodged before the I.I.C., Keonjhar Sadar Police Station, on the basis of which FIR No. 0400 was registered. Subsequently, on 10.11.2022, the police submitted the final report, registered as P.S. F.R. No. 1.

- (e) In the year 2023, Respondent Nos. 1 and 2, being the parents of the deceased, filed an application seeking compensation in Form 'G' before the Commissioner for Employees' Compensation-cum-Deputy Labour Commissioner, Cuttack under the Employees' Compensation Act, 1923, which was registered as E.C. Case No. 341 of 2023.
- (f) Upon receipt of notice, the Appellants filed their written statement denying the allegations and claims made in the application. The Odisha Mining Corporation Limited, Respondent No. 3, also filed its written statement.
- (g) Two witnesses were examined on behalf of the claimants, including Respondent No. 2, the father of the deceased. Three witnesses were examined on behalf of the Appellants.
- (h) By judgment dated 04.07.2025, the learned Commissioner allowed E.C. Case No. 341 of 2023, held the opposite parties liable, and directed the General Manager, Odisha Mining Corporation Limited, to deposit a sum of Rs. 15,59,850/- along with interest at the rate of 12% per annum from 03.10.2022 till realisation, within a period of 30 days. It was further directed that failure to deposit the amount would attract penalty at the rate of 50% in terms of Section 4A of the Act.



- (i) On 18.07.2025, Respondent No. 3 filed a modification application seeking a direction permitting it, as principal employer, to pay the compensation with liberty to recover the same from the contractor, namely the present Appellants.
- (j) By order dated 03.09.2025, the learned Commissioner rejected the modification application but granted liberty to Respondent No. 3 to recover the awarded amount from the Appellants under Section 12(2) of the Act.
- (k) Pursuant thereto, the Regional Manager, Regional Office, Gandhamardan, Odisha Mining Corporation Limited, issued letters dated 17.09.2025 and 19.09.2025 directing the Appellants to deposit the awarded amount within seven days.
- (l) Being aggrieved by the judgment dated 04.07.2025 and the subsequent order dated 03.09.2025, 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:
 - (a) The Appellants submitted that the judgment and order dated 04.07.2025 and the subsequent order dated 03.09.2025 passed by the learned Commissioner in E.C. Case No. 341 of 2023 are illegal, arbitrary, bad in law, and contrary to the provisions of the Employees' Compensation Act, 1923.
 - (b) The Appellants submitted that the impugned orders suffer from non-application of mind and are contrary to the evidence, witness



depositions, and materials on record, and therefore are liable to be quashed.

- (c) The Appellants submitted that the learned Commissioner erred in entertaining the claim application filed by Respondent Nos. 1 and 2, rendering the impugned judgment and order unsustainable.
- (d) The Appellants submitted that the learned Commissioner committed a gross error in concluding that Respondent Nos. 1 and 2 were entitled to compensation of Rs. 15,59,850/- along with interest @12% per annum from 03.10.2022, which finding is unsustainable and liable to be set aside.
- (e) The Appellants submitted that the averment in Form G that the deceased was travelling on company work to purchase parts was specifically denied in their written statements. It was contended that the deceased was on personal work along with a lady known to him, and that he was never entrusted with any duty of purchasing parts. This stand, corroborated by O.P.W. No. 1, was ignored in the impugned order.
- (f) The Appellants submitted that the learned Commissioner failed to appreciate the evidence of Nityananda Behera (father of the deceased), who admitted in cross-examination that he could not identify any company officer who instructed the deceased to purchase parts, nor could he state which part was to be purchased.
- (g) The Appellants submitted that the deceased had "A" shift on 01.10.2022, work was suspended on 02.10.2022 due to the national holiday, and he had "C" shift from 10:00 p.m. to 6:00 a.m. on



03.10.2022. These admitted facts were corroborated by all three witnesses of the Applicants. Therefore, the deceased was not in the course of employment at 3:30 p.m. on 03.10.2022 when the accident occurred.

- (h) The Appellants submitted that under the Employees' Compensation Act, 1923, liability arises only when an accident occurs out of and in the course of employment, or aggravates a pre-existing condition during employment, or leads to disability or death while on duty. None of these statutory requirements were satisfied in the present case.
- (i) The Appellants further submitted that Section 3(1) of the Act mandates employer liability only for injuries arising out of and in the course of employment; this essential requirement was not met.
- (j) The Appellants submitted that O.P.W. Nos. 1, 2, and 3 all consistently stated that the deceased had "C" shift from 10:00 p.m. to 6:00 a.m. and that he met with an accident at 3:30 p.m., when he was not on duty. Despite this consistent evidence, the learned Commissioner erroneously concluded that the accident was work-related.
- (k) The Appellants submitted that the learned Commissioner failed to appreciate that the deceased was not in the course of employment when the accident occurred.
- (l) The Appellants submitted that the learned Commissioner failed to appreciate that the present case does not fall under the Employees'



Compensation Act, 1923 and, at best, constitutes a case under the Motor Vehicles Act, 1988.

- (m) The Appellants submitted that the learned Commissioner failed to apply the settled principles laid down by the Supreme Court in *Regional Director, ESI Corporation v. Francis De Costa*¹ and by this Court in *Laxmidhar Kumbhar v. Divisional Manager, OFDC*², wherein it has been held that unless a causal connection between the accident and the employment is established, and unless the accident occurs in the course of employment, no compensation can be awarded under the Employees' Compensation Act.
- (n) The Appellants submitted that O.P.W. No. 1 clearly established that no employee, including the deceased, was authorised to purchase spare parts, and such purchases could only be made with prior approval by the designated store officer. This uncontroverted evidence was ignored by the learned Commissioner.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

5. Learned Counsel for the Respondents earnestly made the following submissions in support of his contentions:
- i. The Respondents submitted that the present appeal filed by Appellant No. 1 is not maintainable in law and is liable to be dismissed. It is contended that neither Appellant Nos. 1 and 2 nor the principal employer, Respondent No. 3, has deposited the awarded compensation amount before the learned Commissioner as required under Section 30 of the Employees' Compensation Act,

¹ 1996 (6) SCC 1.

² 2014 SCC Online Ori 326.



1923. Since such deposit is mandatory for the maintainability of an appeal, the present appeal is not legally sustainable.

- ii. The Respondents submitted that there are no irregularities or infirmities in the impugned judgment and order passed by the learned Commissioner. It is contended that the findings have been correctly arrived at on the basis of the materials on record and, therefore, the impugned judgment deserves to be upheld on merits. Accordingly, the Respondents prayed that the present appeal be dismissed.
- iii. The Respondents submitted that it is crystal clear from the evidence of O.P.W. Nos. 1, 2, and 3 that the deceased died in the course of his employment. It is contended that the Appellants deliberately suppressed material facts during the proceeding in an attempt to avoid payment of compensation to the Respondents. On this ground alone, the Respondents asserted that the present appeal is liable to be dismissed for suppression of facts.
- iv. The Respondents submitted that ordinarily, after completion of the "A" shift, the "B" shift follows and thereafter the "C" shift. However, the shift arrangement relied upon by the Appellants indicates that their workmen, including hydraulic drill operators, were engaged only in two shifts, namely a day shift and a night shift. It is further contended that there is inconsistency regarding the working hours of the deceased on 03.10.2022, as reflected in the materials produced by the Appellants and in the oral evidence, and that there is no coordination among the Appellants' own witnesses



regarding the shift arrangement applicable to the deceased. The Respondents submitted that these discrepancies render the Appellants' case unreliable and therefore the appeal deserves to be dismissed on merits.

- v. The Respondents submitted that the Opposite Parties did not file the Master Roll or the Wage Register of the deceased workman, Sarbeswar Behera, before the learned Commissioner, which reflects a mala fide intention to suppress the real facts of the case. It is contended that, in view of this deliberate withholding of material records and considering the testimonies of O.P.W. Nos. 1, 2 and 3, the present appeal deserves to be dismissed.
- vi. The Respondents submitted that the impugned judgment of the learned Commissioner ought to be upheld, as the contradictory evidence adduced by O.P.W. Nos. 1, 2 and 3 demonstrates suppression of the true facts relating to the nature of the accident and the employment of the deceased. It is contended that the appeal filed by Appellant No. 1 bears no merit and should accordingly be dismissed.

IV. FINDINGS OF THE COMMISSIONER FOR EMPLOYEES' COMPENSATION-CUM-DEPUTY LABOUR COMMISSIONER, CUTTACK:

- 6. The learned Commissioner, upon consideration of the pleadings, evidence and documents adduced by the parties, held that the deceased, Sarbeswar Behera, was employed as an HWD Operator under Opposite Party Nos. 1 and 2 since 2018 and therefore came within the definition of "employee" under the Employees' Compensation Act, 1923. On an



appreciation of the testimonies of PW-1 (father of the deceased) and PW-2 (occurrence witness), together with the police papers, duty card, identity documents and other materials on record, the Commissioner concluded that the accident which occurred on 03.10.2022 at about 3:30 p.m. arose out of and in the course of the deceased's employment.

7. In arriving at this conclusion, the Commissioner rejected the stand of Opposite Party Nos. 1 and 2 that the deceased had gone for personal work. The Commissioner noted inconsistencies in the evidence of the Opposite Parties themselves regarding the shift arrangement applicable to the deceased, including a mismatch between the shift abstract produced by them and the oral evidence of their witnesses. The Commissioner also observed that the Master Roll and Wage Register, which were material to ascertain the nature of employment and duty hours, had not been produced by the Opposite Parties, and drew an adverse inference from such non-production.
8. Having held that the accident occurred in the course of employment, the Commissioner proceeded to determine the age and wages of the deceased. The age was taken as 30 years based on official identity documents, and the monthly wages were taken as Rs. 15,000/- in the absence of reliable documentary evidence of higher wages. Applying the statutory formula under Section 4(1) of the Act, the Commissioner assessed the compensation payable to the applicants at Rs. 15,59,850/-. The Commissioner further held, on the basis of binding decisions of the Supreme Court and this Court, that interest @ 12% per annum was payable from the date of accident, i.e., 03.10.2022, until realisation.



9. The Commissioner fastened the liability for payment of the awarded amount on Opposite Party No. 3, the Odisha Mining Corporation, as the principal employer under Section 12(1) of the Act, with liberty to recover the same from the contractor under Section 12(2).
10. In the subsequent proceeding dated 03.09.2025, the Commissioner rejected the application filed by Opposite Party No. 3 seeking modification of the order dated 04.07.2025, holding that he had become functus officio and had no jurisdiction to modify his own final order. Opposite Party No. 3 was accordingly directed to deposit the awarded compensation with liberty to pursue recovery in accordance with law.

V. COURT'S REASONING AND ANALYSIS:

11. Heard learned counsel for the parties and perused the material on record.
12. At the outset, it is necessary to note the limited scope of an appeal under Section 30 of the Employees' Compensation Act, 1923. An appeal under the said provision lies only against the orders enumerated in clauses (a) to (e) of sub-section (1) and only when a substantial question of law arises for consideration. The appellate jurisdiction of this Court is, therefore, circumscribed and does not extend to a re-appreciation of evidence as in a regular first appeal under Section 96 of the Code of Civil Procedure.
13. In this regard, the Supreme Court in *North East Karnataka Road Transport Corpn. v. Sujatha*³ observed that the High Court's jurisdiction under Section 30 is not akin to a first appeal under Section 96 of the Code of Civil Procedure and that it is confined only to substantial questions of law. The relevant extract is reproduced hereinunder:

³ (2019) 11 SCC 514.



"9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependants of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident, etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue(s) his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case."



14. In *Pratap Narain Singh Deo v. Srinivas Sabata & Anr.*⁴ the Supreme Court held that once the relationship of employer and workman is established and it is shown that the workman suffered personal injury by accident arising out of and in the course of employment, the employer's liability to pay compensation under Section 3 becomes immediate and automatic. The Court observed:

"7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the ability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19..."

15. In the present case, the principal contention of the Appellants is that the deceased was not in the course of employment at 3:30 p.m. on 03.10.2022 and that the learned Commissioner erred in concluding otherwise. It is

⁴ 1976 (1) SCC 289.



urged that the deceased was assigned 'C' shift duty from 10:00 p.m. to 06:00 a.m. and, therefore, could not have been on official duty at the time of the accident. The Appellants further dispute the correctness of the finding that the deceased was travelling to Suakati Bazar to purchase parts on behalf of the employer.

16. The learned Commissioner arrived at the aforesaid finding upon consideration of the oral and documentary evidence on record, including the testimonies of PW-1 and PW-2, the duty card, identity documents, and the police papers. PW-2, who claimed to be an occurrence witness, stated that the deceased was working as an operator at the site and that the accident occurred during the work period. PW-1 stated that the deceased had left to purchase parts required for the machine. The learned Commissioner accepted these statements.
17. The learned Commissioner, however, found the evidence of O.P.W. Nos. 1, 2, and 3 to be inconsistent. While the Opposite Parties asserted the existence of three shifts, namely 'A', 'B', and 'C', the shift abstract produced by them reflected only two shifts, namely a day shift and a night shift, without specification of timings. It was further noted that the working time of the deceased as reflected in Ext-9 did not align with the shift abstract. On this basis, the learned Commissioner recorded a finding of lack of consistency in the Opposite Parties' evidence regarding shift arrangements.
18. The Commissioner also recorded that the Master Roll and Wage Register, which were material documents to establish the duty hours and nature of employment, were not produced by the Opposite Parties without any



satisfactory explanation. An adverse inference was accordingly drawn. This approach cannot be said to be contrary to law.

19. The findings of the Commissioner, therefore, are based on appreciation of evidence. Whether the deceased was on duty, whether he was travelling for company work, whether the parts were required urgently, and whether the journey had a nexus with employment are all pure questions of fact. The material relied upon by the Appellants does not disclose that the findings are perverse, based on no evidence, or vitiated by consideration of irrelevant material.
20. The contention that the case falls under the Motor Vehicles Act and not under the Employees' Compensation Act equally rests upon the factual determination as to whether the accident arose out of and in the course of employment. The learned Commissioner having returned a categorical finding on the said issue upon appreciation of evidence, no substantial question of law arises for consideration
21. As regards the quantum of compensation, the Commissioner determined the age of the deceased on the basis of identity documents and the wages on the basis of the statutory notification in the absence of documentary proof of higher wages. This method accords with the scheme of Section 4 of the Act and does not disclose any legal infirmity.
22. The direction fastening liability on the principal employer under Section 12(1), with liberty to recover from the contractor under Section 12(2), is in consonance with the statutory mandate and established judicial principles. No substantial question of law arises in this regard.



23. The subsequent order dated 03.09.2025 merely rejected the modification petition filed by Opposite Party No. 3 on the ground of the Commissioner being *functus officio*. This conclusion is correct in law and does not give rise to any substantial question requiring interference.

VI. CONCLUSION:

24. In view of the foregoing analysis and upon consideration of the statutory scheme under Section 30 of the Employees' Compensation Act, 1923, this Court finds no perversity, illegality, or error of law in the findings recorded by the learned Commissioner for Employees' Compensation-cum-Deputy Labour Commissioner, Cuttack. The conclusions reached are based on appreciation of evidence, and no substantial question of law arises for consideration in the present appeal.
25. Accordingly, the appeal stands **dismissed**. The impugned judgment dated 04.07.2025 and the subsequent order dated 03.09.2025 passed in E.C. Case No. 341 of 2023 are affirmed.
26. Interim orders, if any, passed earlier stand vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

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