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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.(C) No. 1540 / 2008 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<b>HIGH COURT OF CHHATTISGARH AT BILASPUR</b>	
	<b>Coram : Hon'ble Shri Dhirendra Mishra, Hon'ble Shri Dilip Raosaheb Deshmukh, JJ.</b>	
	<b>Misc. Appeal (C) No. 1540 of 2008</b>	
	<b><u>Appellant</u> <u>Non-Applicant No.2</u></b>	The New India Assurance Co. Ltd. Near Jhankar Talkies, Jagdalpur, Distt. Bastar through the Divisional Manager, New India Assurance Co. Ltd., Opp. Rajiv Plaza, Near Bus Stand, Bilaspur.
	<b><u>Versus</u></b>	
	<b><u>Respondent No.1</u> <u>Applicants</u></b>	(a) Smt. Dashmati, W/o Late Sridhar Kashyap, aged 20 years, (b) Jaiman, S/o Late Sridhar Kashyap, aged 4 years, (c) Ku. Subati, D/o Late Sridhar Kashyap, aged 2 years, (Sl.No. (b) & (c) minor through her mother Smt. Dashmati, W/o Late Sridhar Kashyap, aged 20 years) (All Caste - Muriya, R/o Vrindawan Colony, Jagdalpur, Distt. Bastar (C.G.)
	<b><u>Respondent No.2</u> <u>Non-Applicant No.1</u></b>	Harjindar Singh, S/o Late Mohan Singh Joshi, aged 27 years, R/o Behind Bastar Diesels, Danteshwari Ward, Jagdalpur, Distt. Bastar.
	<b><u>Respondent No.3</u> <u>Non-Applicant No.2</u></b>	Budhruram, S/o Konwa, aged 55 years, R/o village, Chitagudapara, kumhali, P.S. Lohandiguda, Distt. Bastar (CG)



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## आदेश पत्रक (पूर्वानुबद्ध)

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	<p align="center"><b><u>Miscellaneous Appeal under Section 30 of Workmen's Compensation Act, 1923.</u></b></p> <p><u>Present:</u> Shri Nawal Kishore Agrawal, Senior Advocate with Shri G.V.K.Rao, counsel for the appellant/insurance company.</p> <p align="center"><b><u>ORAL ORDER</u></b> (Passed on 28.11.2008)</p> <p>The following oral order of the Court was passed by Dharendra Mishra, J.</p> <p>The appellant/insurance company has preferred this appeal under Section 30 of the Workmen's Compensation Act, 1923 (for short 'Act of 1923') against the award dated 28.06.2008 whereby the respondents No.1 (a) to (c) have been awarded a sum of Rs.4,42,740/- as compensation by the Commissioner for Workmen's Compensation, Labour Court, Jagdalpur (for short 'the Commissioner') for the death of Sridhar Kashyap, husband of respondent No.1 (a) and the father of respondents No.1 (b) and (c), who died on 20.04.2006 during the course of employment under respondent No.2.</p> <p>2. The appellant has preferred this appeal on the following substantial questions of law:</p> <p>"A/ Whether the Learned Commissioner for Workman Compensation erred in assessing monthly salary as Rs.5,000/- and thus erred in granting compensation?</p>	



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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>B/ Whether the Learned Commissioner for Workman Compensation erred in law in awarding the interest against the appellant Insurance Co."</p> <p>3. Learned counsel for the appellant submits that the finding of the Tribunal that the deceased workman was drawing wages at the rate of Rs.5000/- per month is based on misreading of the evidence available on record. Referring to the statement of respondent No.2/employer, it was argued that the workman was paid wages at the rate of Rs.3000/- per month and he was also paid travelling allowance at the rate of Rs.150/- per day whenever he went on tour. However, the Commissioner misreading the evidence of Harjindar Singh has held that the wages of the deceased workman was at Rs.5000/- per month. Learned counsel for the appellant also referred to sub-section (m) of Section 2 of the Act of 1923 while arguing that the travelling allowances on the value of any travelling concession paid to a workman is excluded from the definition of the wages.</p> <p>3. We have heard learned counsel for the appellant. We have also gone through the evidence of respondent No.1 (a) – Smt. Dashmati as also the evidence of employer Harjindar Singh – respondent No.2. Smt. Dashmati in paragraph 2 of examination-in-chief has categorically stated that her husband was paid wages @ Rs.5000/- per month. In her cross-examination, she has denied the suggestion that he was paid salary @ Rs.3000/- per month whereas the employer in his examination-in-chief he stated that he paid to Sridhar Rs.3000/- towards monthly salary. However, in cross-examination he has admitted that Sridhar might have been</p>	



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	<p>receiving wages @ Rs.5000/- including allowances. In paragraph 10 of his cross-examination by non-applicant No.2 (appellant herein) he stated that the workman was paid Rs.150/- per day towards food and other expenses while he was on tour in connection with duty. Therefore, from the bare perusal of the evidence of the above witnesses, the argument advanced by the learned counsel for the appellant that the finding of the Tribunal is based on misreading of the evidence is baseless. We are of the opinion that the substantial question No.1, as proposed by the appellant, is not involved for adjudication of this appeal. Learned counsel for the appellant fairly submits that the substantial question No.2, as proposed by the appellant, is not made out as the policy is motor vehicle policy.</p> <p>5. For the aforesaid reasons, no question of law much less any substantial question of law is involved for adjudication of this appeal. This appeal has no substance. The same deserves to be and is accordingly dismissed.</p>	
	Sd/- Dhirendra Mishra Judge	Sd/- Dilip Raosaheb Deshmukh Judge

Anjani