

Heard Mr. R.K. Bhatra, learned counsel for the appellant.

Challenging the legality and validity in the judgment and award dated 14-8-2006 passed in WC case No. 51 of 2002, the present appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, by the appellant Insurance Company.

The aforesaid case was initiated by the claimant/respondent alleging inter-alia that while he was serving as a handyman under the opposite Party No. 1, in the vehicle (Truck) No.AS-17/0456, he met with an accident, \within the meaning of the Act\ on 27-5-2001, as result of which, he suffered injury on his left foot ankle joint and leg. The claimant further stated that he was treated in the nearby Nursing Home, Bongaigaon, wherefrom he was moved to Dhubri and was under treatment in the Dhubri Civil Hospital. The vehicle in question was insured with the appellant, i.e. the Insurance Company and the driver had a valid driving license. It is also stated, that due to the injury on his leg, foot ankle joint he could not do his duty for permanent disablement, asserting his monthly salary to be 1,400/- and his age as 19 years during the relevant period. The claimant prayed for compensation amounting to Rs. 3,50,000/-. In support of his claim, the owner i.e., the opposite party No. 1 did not file the written statement. However, the owner, the opposite party No. 1, in reply to the notice under Section 10, denied that the claimant was his driver and he denied any connection between the employer and the employee with the claimant. The Insurance Company after filing the written statement took plea that the claimant was a handyman of the offended truck and not a workman under the workmen's Compensation Act. They did not adduce any evidences to that affect. In support of his claim the also did not examine any witness to prove the accident.

The learned Tribunal considering the materials and evidences available on record, awarded a sum of Rs. 47,296/- as compensation for the injuries caused to the claimant with interest @ 9% per annum. The same interest was directed against the owner of the vehicle where as the amount of compensation against the present appellant.

Mr. Bhatra challenging the same impugned award has submitted that in view of the letter of denial of the owner of the vehicle that the claimant was serving as a handyman engaged in his offended truck which was put on record and exhibited as Ext- 2 by the claimant himself. The learned Commissioner was wholly unjustified in treating the claimant to be a general worker under the said vehicle and consequently his impugned award is bad in law. Mr. Bhatra further submits that the material and evidences available on record did not justify the passing of the award in favour of the claimant.

During the course of hearing, Mr. Bhatra has produced a certified copy of Ext-2 as well as evidences adduced by the claimant and his witnesses. In his evidences the claimant has assailed that he was serving as a handyman in the offending truck and on that fateful day while he was checking the tyre of the vehicle, on being asked by the owner, all on a sudden, the driver started to drove the vehicle as result of which the accident took place. In his cross-examination he denied the suggestion that he was serving as a handyman in the said vehicle. PW 2, who is a driver of another vehicle, was an eye witness of the occurrence. He also corroborated the statement of the claimants. The Ext-2, upon which, much reliance has been placed by Mr. Bhatra, is the reply to the notice under Section 10, issued on behalf of the claimant, wherein the owner of the vehicle has denied the relationship of the employer and the employee with the claimant.

Also the said document which was exhibited by the claimant author, was not produced before the Court to examine the truthfulness or otherwise the contents of the same in Ext-2. In fact, the owner of the vehicle did not contest the case at any point of time. The Insurance Company although submitted a written statement, had preferred to examine their witnesses in support of their claim. In that view of the matter the case cannot be the sole criteria for claimant to claim comp

ensation and on the face of existence of evidences, no liberty is given to the claimant and his witnesses to claim compensation.

In that view of the matter, I do not find any merit in this appeal and accordingly it stands dismissed.