
(2019) 08 GAU CK 0085

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 86 Of 2011

National Insurance Co. Ltd

APPELLANT

Vs

Jitu Deka And Anr

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Citation : (2019) 08 GAU CK 0085

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : F Khan, N Talukdar

Final Decision : Dismissed

Judgement

1. Heard B.J. Mukherjee, learned counsel for the appellant. None appears for the respondent.

2. A claim was made under the Workmen's Compensation Act that on 24.10.2008, while the injured workman was on duty as handyman of 709 Starbus bearing Regd No.AS-05/B-6611 and further while the said bus was proceeding from Sarupathar side towards Golaghat through the NH-39, it met with an accident with another truck and as a result of the accident, the claimant handyman sustained injury of grievous type. After the accident, he was taken to the KK Civil Hospital, Golaghat where he was treated as an indoor patient and thereafter he was referred for treatment to the AMCH Dibrugarh. The claimant workman sustained injury over his left humerus and he was required to be given treatment with iron plate and screw over the fractured portion. The workman claimed that he was working as a handyman of the concerned bus and was paid a monthly salary of Rs. 4000/- excluding his daily wage and at the time of the accident he was about 25 years old. After the accident, he was totally disabled and has claimed an amount of Rs.5,00,000/- as compensation.

3. In the written statement, the owner of the vehicle admitted that the workman was under his employment and further that the vehicle concerned was insured

with the appellant insurance company. The Insurance Company on the other hand filed a written statement having denied that the workman claimant was a workman and that his injuries were sustained in an accident in course of his employment.

4. The claimant in his evidence as PW-1 had stated that he was employed as a handyman in the vehicle concerned and that the vehicle met with an accident on 24.10.2008 as a result of which, he had sustained injuries. He further deposed that his salary was of Rs. 4000/- per month excluding the daily allowance. He also deposed that at the time of the accident the driver of the vehicle had a valid driving licence and the vehicle was insured with the appellant Insurance Company. The claimant also exhibited the medical document which showed the extent and the nature of the injury that he had sustained. The Insurance Company in their written statement had raised a question as to whether the driver of the vehicle which met the accident had a valid driving licence.

5. Based on the aforesaid materials, the Commissioner for Workmen's Compensation, Golaghat awarded the compensation of Rs.258336/- with simple interest of 9% per annum in favour of the workman. The award of compensation which was made as per the judgment and order dated 23.09.2010 in W.C. Case No.65/2008 has been assailed in this appeal.

6. Two substantial question of law have been raised by the appellant Insurance Company that firstly the owner of the vehicle had given the evidence that the salary of the workman claimant was Rs.1500 per month and not 4000/- per month. Secondly, the substantial question of law raised was that the claimant workman had failed to discharge the burden that the driver of the vehicle who met with the accident had a valid driving licence.

7. Regarding first question of law raised, we have gone through the evidence on record and find that there is no such evidence by the owner of the vehicle that the salary of the claimant workman was Rs.1500/- per month. The owner had merely filed a written statement but there is no evidence.

8. The statement made in the written statement are not evidence under the law and as such, the contention of the appellant Insurance Company that as per the evidence of the owner, the salary of the claimant was Rs.1500/- per month cannot be accepted. As regards the other substantial question of law, we find that it is the stand of the Insurance Company that the driver of the vehicle who met with the accident did not have a valid driving licence. But no material has been produced in evidence by the Insurance Company that infact the driver did not have the valid licence. Merely, taking the plea in the written statement does not shift the burden to the claimant to prove that the driver did not have a valid driving licence. The law of evidence provides that the burden to prove is upon the party who takes a particular stand in a proceeding and merely by taking a stand the burden does not shift to the other side to prove or disprove such stand. On the other hand, we find that the claimant in his evidence had stated that the

driver of the offending vehicle did have a valid driving licence and such evidence had not been confronted by the Insurance Company in any manner so as to discard it.

9. Accordingly, the Court does not find any other ground to interfere with the judgment and order dated 23.09.2010 in W.C. Case No. 65/2008 and as such, the appeal stands dismissed.

10. The Insurance Company is directed to do the needful and to pay the compensation amount within a period of 1 (one) month. Send back the LCR.