

(2019) 09 GAU CK 0040

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 173 Of 2010

Oriental Insurance Co. Ltd @APPELLANT@Hash Md. Daraj Ali And Anr

Date of Decision : 17-09-2019

Acts Referred:

Citation : (2019) 09 GAU CK 0040

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P K Sharma, D K Bagchi

Final Decision : Allowed

Judgement

1. Heard Mr. S.K. Goswami, learned counsel for the appellant Insurance Company. None appears for the respondent.

2. On 10.09.2019 the matter stood adjourned as the legal aid counsel was having some personal inconvenience. Today also the learned counsel is absent. It is an appeal of the year 2010 and we are of the view that the desire of the learned counsel to not to appear cannot detain the Court from deciding the matter any further.

3. This is an appeal against the judgment and order dated 17.07.2008 of the Commissioner, Workmen's Compensation, Guwahati in WC Case No.129/2003. It was stated that the claimant was working as a labourer in a truck bearing registration No.AS-14-7140 which was owned by the respondent No.2. namely, Smti. Gitanjali Bhattacharjee. While in employment the vehicle met with an accident on 25.12.2002 while it was plying from Rampur to Mudgi. As a result of the accident, the claimant workman suffered certain injuries, which according to him resulted in a permanent disability to perform his job.

4. In the proceeding, the claimant deposed that he was employed as a labourer in the truck bearing registration No.AS-14-7140 and at the time of the accident, he was receiving a salary of Rs.4,000/- per month. The owner of the vehicle filed a written statement stating that the owner of the vehicle does not admit that the claimant was a labourer in her vehicle and stated that the claim was filed with a

view to obtain an undue gain of compensation in the name of workman. It is stated that along with the claimant, two other persons also made a similar claim against the same owner namely Smti Gitanjali Bhattacharee wherein also it was claimed that they were labourers in the truck bearing registration No.AS-14-7140 and they were injured in the accident that took place on 25.12.2002 and that they were also earning a salary of Rs.4,000/- per month. All the claimants were heard analogously by the Commissioner of Workmen Compensation and therefore, the evidence that were rendered were also a common evidence in all the three claims. In hearing before the Commissioner, the husband of the owner of the vehicle specifically deposed that none of the claimants including the present claimant were their employees and infact the husband of the owner had deposed that although the vehicle concerned met with an accident on 25.12.2002, but at the time of the accident neither they had any employee nor there was any other person who was travelling in that vehicle. Even the police report of the accident provided that although the vehicle met with an accident, but at the time of the accident no other person were travelling in the vehicle. The claim form submitted by the owner of the vehicle to the Insurance Company immediately after the accident which is exhibited as Exbt-b also shows that there were no persons travelling in the vehicle at the time when met with the accident.

5. In the aforesaid circumstance, in respect of the claim made by one Habibur Rahman, who was amongst the three persons who had made a similar claim, this Court by its order dated 09.08.2018 in MFA 172/2010 had dismissed the claim made by Habibur Rahman.

6. In the instant case also we are of the view that as a similar claim had been in respect of the same accident where there is a judicial conclusion that the vehicle which met with the accident did not carry any person nor did it have any employee of theirs at the time of the accident, we are not inclined to take a different view in the present claim made by the claimant Daraj Ali.

7. In view of the above, the judgment and order dated 17.07.2008 in W.C. Case No.129/03 awarding a compensation of Rs.1,95,951/- in favour of the respondent claimant workman is set aside.

The appeal stands allowed as indicated.

Send back the LCR. Any amount deposited by the appellant in course of the present proceeding be now allowed to be withdrawn by the appellant.