



GAHC010004712009

Page No.# 1/6



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : MFA/19/2009**

ORIENTAL INSURANCE CO. LTD.  
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE, A-25/27, ASAF ALI  
ROAD, NEW DELHI-110002, AND REGIONAL OFFICE AT GUWAHATI-7.

VERSUS

SHRI SATINDRA KALOWAR and ANR.  
S/O LT. RAMKRISHNA KALOWAR R/O DULABARI, P.S. TEZPUR, DIST.  
SONITPUR, ASSAM.

2:SHRI SASHI DUTTA

S/O LT. SOMESWAR DUTTA VILL. DHARMANA  
P.O. DIPHU DIST. KARBI ANGLONG  
ASSAM. OWNER OF VEHICLE NO. AS-09-4899

**Advocate for the Petitioner : MS.M CHOUDHURY**

**Advocate for the Respondent :**

**BEFORE**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

For the Appellant : Shri S Dutta, Advocate.

For the Respondents : X X X X



Date of Hearing : 18.09.2023.

Date of Judgment : 18.09.2023.

**18.09.2023.**

### **Judgment & Order**

Heard Shri Siddhant Dutta, learned counsel for the appellant, who has preferred this appeal under Section 30 of the Workmen's Compensation Act, 1923 (presently, the Employee's Compensation Act, 1923) (hereinafter referred to as the Act) against a judgment and award dated 16.10.2008 passed by the learned Commissioner Workmen's compensation, Tezpur in WC Case No. 6/2006. By the aforesaid judgment, an amount of Rs.1,31,040/- has been awarded with interest at the rate of 12% per annum from the date of the order.

**2.** This Court while admitting the appeal, vide order dated 20.05.2009 had framed the following substantial question of law:

*“Whether learned commissioner acted illegally in discarding the evidence of the owner that the injured i.e. the claimant was not his employee and that he even did not know the claimant and holding the claimant to be an employee under the owner.”*

**3.** As regards the service of notice, publication was made in the 'Dainik Asom' and 'The Assam Tribune' on 19.09.2018 as per an order of this Court dated 20.05.2009. This Court, accordingly vide order dated 11.02.2019 had held that

service is complete. The LCR which was called for has also been received.

**4.** Shri Dutta, learned counsel for the appellant-Insurance Company has submitted that though a written statement was filed by the owner of the vehicle wherein the employment of the claimant was admitted, the said owner, as DW1, had deposed that the claimant was not under his employment whom he did not even know. He had also denied submitting of any written statement. It may be mentioned that as per the claimant's version, he was the cleaner/conductor of the vehicle, namely, Minibus with Registration No. AS-09/4899 which had met with the accident on 08.11.2005 when he had sustained grievous injuries on his right leg, right hand and other parts of the body. There was a specific claim with regard to having a fracture of the radius of the right hand and the disability *qua* loss of earning capacity was determined to be 25%.

**5.** The learned counsel for the appellant has also referred to the FIR which was lodged in connection with the accident. The said FIR which is available with the LCR was lodged by one Menso Basumatary on 14.11.2015 in respect of his brother, namely, Latip Basumatary who was stated to be injured. Shri Dutta, learned counsel submits that there was no mention about the claimant in the said FIR and therefore, the claim itself becomes doubtful. It is also submitted that once the employment itself was denied by the owner of the vehicle, the onus would accordingly shift upon the claimant to prove such Employer-Employee relationship and that onus has not been discharged in accordance with law.

**6.** This Court has noted that in spite of service of notice, none of the

respondents have come forward to contest the claim. The contentions raised by the learned counsel for the appellant have been duly considered and the materials placed before this Court have been carefully examined. At the outset, this Court takes notice of the fact that unlike an appeal prescribed by the MV Act which is almost a matter of right, an appeal under Section 30 of the Employee's Compensation Act would lie to the High Court only on certain conditions and only on availability of a substantial question of law. The entire objective of the legislation is to bring a finality of a process of adjudication made by the Employee's Commission deciding a claim raised by an employee or a member of the bereaved family who had suffered an injury/death by an accident while being in such employment.

**7.** The substantial question of law which has been discussed hereinabove is one which involves the facts of the case, namely, the relationship of Employer-Employee.

**8.** The judgment passed by the Employee's Commissioner has not only considered the aforesaid aspect but also gave adequate reasons for coming to the conclusion of there being a relationship of Employer-Employee. In the said judgment, the version of the employer, Shri Sashi Dutta in his written statement has been taken into account wherein the employer had admitted employment of the claimant, monthly salary and payment of daily allowance. The learned Commissioner has also taken into consideration the evidence on record of the witnesses.

**9.** Shri Dutta, learned counsel by referring to the deposition of the owner as

DW1 has, however, submitted that in such deposition, the employment was denied with an explanation that the vehicle was sold. The judgment, however, makes it clear that such sale of the vehicle was only at a time of making the depositions and the accident had occurred in the year 2005. The contention raised by Shri Dutta, learned counsel regarding denial of submission of written statement and also denial of his signature by the owner has also been taken note of by the learned Commissioner.

**10.** The learned Commissioner has based his findings on materials on record after observing that Shri Sashi Dutta, the owner of the vehicle, who had deposed as DW1, has signed his deposition, both in Assamese and in English thereby contradicting his earlier deposition that he did not sign any document in English. The learned Commissioner while justifying his findings has made the observation that the owner had given contradictory statements in his depositions and thereby had lost credence and cannot be relied upon. The learned Commissioner has also come to a conclusion that the claimant has proved his case with the police report and other medical documents.

**11.** Though Shri Dutta, learned counsel has raised a point regarding the FIR, it appears that such point was not raised before the learned Commissioner and therefore, in an appeal under the Act in question, it may not be proper to go into such issue which was never raised. In any case, though the FIR was lodged by one Menso Basumatary with regard to the injury suffered by his brother, Latip Basumatary, it may not be concluded that in the said accident constituting a Minibus, there were no other injuries to any other persons. In any case, the claimant had proved the police report pertaining to the accident in question.



There is no dispute with regard to the calculation made by the learned Commissioner while reaching the figure of the awarded amount.

**12.** Under the aforesaid facts and circumstances and the also taking into consideration the fact that the impugned judgment is based on cogent reasons wherein all the relevant materials have been taken into account and the objections raised were also properly dealt with, this Court is of the opinion that the present is not a fit case for interference. The conclusion of this Court is also reached by keeping in mind the objective of the Act and also the fact that the awarded amount is reasonable and not exorbitant in nature.

**13.** The appeal is accordingly dismissed.

**14.** This Court has been informed that 50% of the Award has been deposited before the learned Commissioner, which was allowed to be withdrawn. Accordingly, the rest of the amount is directed to be deposited along with interest as per the award, which is to be released to the claimant forthwith.

**15.** Let the LCR be sent back immediately.

**JUDGE**

**Comparing Assistant**