

GAHC010129582013



2025:GAU-AS:2015

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

Case No. : MFA/47/2013

THE UNITED INDIA INSURANCE CO LTD
HAVING ITS REGISTERED AND HEAD OFFICE AT 24 WHITES ROAD,
CHENNAI 600014 AND ONE OF THE REGIONAL OFFICE AT G. S ROAD,
DISPUR, GUWAHATI 78105 AND ONE OF THE BRANCH OFFICES AT
GOALPARA, ASSAM.

VERSUS

ANJERA BEWA @ ANJUMA BEWA and 3 ORS
W/O LATE HAREJ ALI, VILL. DEKDHOWA, P.O. DUBAPARA, P.S.MORNOI,
DIST. GOALPARA, ASSAM.

2:MD. SIRAJ ALI

FATHER OF LATE HAREJ ALI
VILL. DEKDHOWA
P.O. DUBAPARA
P.S MORNOI
DIST GOALPARA
ASSAM.

3:MST. HAZERA KHATUN

MOTHER OF LATE HAREJ ALI
VILL. DEKDHOWA
P.O.DUBAPARA
P.S. MORNOI
DIST. GOALPARA
ASSAM.

4:MD.JUL HUSSAIN MIAH

SON OF S. BEPARY
VILL. GOBINDAUR
P.O. GOBINDAPUR
P.S.GOALPARA
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR.U DUTTA, MRN BHUYAN,MR.A J SAIKIA,MR.K BORA

Advocate for the Respondent : ,MR.H DAS(R- 1 - 3),

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. A.J. Saikia,
Advocate.

For the Respondents : Mr. H. Das,
Advocate.

Date of Hearing : 25.07.2024.

Date of Judgment : 27.02.2025.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.J. Saikia, learned counsel representing the appellant Insurance Company as well as Mr. H. Das, learned counsel appearing for the respondents.

2. This is an appeal under Section 30 of Workmen's Compensation Act, 1923 against the judgment and order dated 08.09.2012 passed in by the Commissioner, Workmen's Compensation, Goalpara in W.C. Case No.05/2007.
3. The decease Harej Ali was an employee of Md. Jul Hussain Miah who owned a Truck bearing Registration No.AS-18/A-0320. The deceased was driver of the said Truck. On 15.11.2006 at about 6.30 P.M., the said Truck met with an accident. As a result of which, Harej Ali died on the spot.
4. Therefore, his wife and children filed an application before the Commissioner for Workmen's Compensation, Goalpara seeking compensation.
5. The appellant Insurance Company and the owner of the Truck filed separate written statements.
6. Md. Jul Hussain Miah, the owner of the Truck admitted that the deceased Harej Ali was his driver and the said Truck belonged to him. He further stated that his Truck had a valid Insurance on the day of the accident.
7. The appellant claimed that the Driving Licence of Harej Ali was valid up-to 05.11.2006. According to the appellant, the accident took place on 15.11.2006 and for that matter, the Driving Licence of Harej Ali was not valid on that day.

8. Upon the pleadings of the parties, the following issues were framed:

- i. Whether there is cause of action for the claim?
- ii. Whether the deceased was a workman as defined under Section 2 of the Workmen's Compensation Act, 1923 as amended up-to-date?
- iii. Whether the applicants are legal heirs and dependents of the deceased workman?
- iv. Whether the applicants are entitled to get the compensation? If so, what should be the just and their amount of compensation? (sic.)
- v. Whether the applicants are entitled to get any other relief under law and equity?

9. On the basis of the materials available before the Commissioner, it was held that the deceased Harej Ali was an employee of Md. Jul Hussain Miah in respect of the Truck bearing Registration No.AS-18/A-0320 and he died in course of his employment. The Commissioner awarded a sum of ₹6,40,710/- along with interest @ 6% per annum to be paid by the appellant.

10. Aggrieved by the aforesaid judgment, the present appeal has been filed.

11. The appellant claimed that the ₹6,40,710/- along with interest @ 6% per annum is excessive and unjust.

12. This time also, the appellant claimed that the deceased Harej Ali did not have a valid Driving Licence on the day of the accident. According to the appellant, the Driving Licence of Harej Ali had expired 10 days prior to 15.11.2006. The appellant claimed that for the aforesaid reason, the deceased Harej Ali was not legally entitled to be appointed as a driver and there cannot be a legal relationship between the employer and employee.

13. I have given my anxious considerations to the submissions made by the learned counsel of both sides.

14. An appeal is a remedial concept determined as an individual's right to seek justice against an unjust decree/order. An appeal is a legal process in which a higher forum reviews the decision of a lower forum on both legal and factual grounds. The term appeal means the judicial examination by a higher court of the decision of an inferior court. Appeal in other word means the removal of a cause from an inferior court to superior court for purpose of testing the soundness of the decision of inferior court.

15. The Hon'ble Supreme Court in Rama Kt. Barman (Died) Thr. Lrs vs Md. Mahim Ali has held as under:

“As per Order XLI Rule 25, the appellate court may, if necessary, frame issues and refer the same for trial to the court whose decree is appealed from, and direct such court to take additional evidence required. Further, as per Rule-27 Order XLI, the Appellate Court may allow evidence or document to be produced or witness examined, in the circumstances stated therein, after recording the reasons for such admission of evidence. However, the Appellate Court can not create a new case for the party, frame the issues and decide the issues without following the procedure contemplated under [Order XLI of CPC.](#)”

16. In this case, there is no denial that late Harej Ali was an employee of Md. Jul Hussain Miah and the accident took place in course of employment under him. The question whether Harej Ali had a Driving Licence that was not valid on the day of the accident was to be proved by the contesting Insurance Company. It is the general principle of law of evidence that whoever claims the existence of

a thing has to prove that it exists. The appellant Insurance Company did not raise that issue before the Commissioner. The provisions of Workmen's Compensation Act are beneficial legislation. Now, after so many years, if the Insurance Company is allowed to raise that issue before the Commissioner, there shall be a *de novo* trial. If such a situation arises, it will be a travesty of justice.

17. I have gone through the impugned judgment. I find that the judgment is a well reasoned one and does not require any interference of this Court.

18. For the aforesaid premised reasons, this Court is of the opinion that this appeal has no merit at all. Accordingly, the appeal stands dismissed and disposed of.

Send back the LCR.

JUDGE

Comparing Assistant