

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 681 of 2005

Appellant :- The New India Assurance Company Ltd.

Respondent :- Sri Kapoor Singh And Another

Counsel for Appellant :- S.C. Srivastava

Counsel for Respondent :- Pankaj Srivastava

Hon'ble Saral Srivastava,J.

1. List has been revised. None for the respondents.
2. Heard learned counsel for the appellant.
3. The present appeal has been filed by the appellant-insurance company challenging the award dated 29.01.2005 passed by the Commissioner, Workmen Compensation, Kanpur Region, Kanpur in W.C. No.16 of 2003.
4. Challenging the award, learned counsel for the appellant has contended that the finding of the Commissioner that there was relationship of employer and employee between the claimant-respondent and owner of truck No.UP78AN/0780. It is submitted that the owner and the driver of truck appeared before the Commissioner and deposed that the claimant-respondent was not employed as cleaner on the truck rather he was travelling as passenger on the truck with the goods which were to be unloaded at Nagpur. Accordingly, it is submitted that the Commissioner has erred in law in entertaining the claim petition.
5. Be that as it may, the Commissioner in disbelieving the testimony of owner and driver of offending truck held that it

is not denied that the claimant-respondent was travelling on the truck. He further recorded a finding that the reason given by the owner and the driver of truck for travelling the claimant-respondent on the truck does not appear to be sound inasmuch as a person would not travel from Bangalore to Nagpur to unload the goods. The finding in respect of relationship of employer and employee returned by the Commissioner is based upon proper appreciation of facts and evidence on record. The finding of fact in appeal under Section 30 of Workmen's Compensation Act cannot be interfered with unless and until it is demonstrated that the same is perverse. In the instant case, the Commissioner has given cogent reason in disbelieving the testimony of owner and driver of the truck in recording the finding of relationship of employer and employee between owner of the truck and the claimant-respondent. In such view of the fact, this Court does not find any merit in the submission of learned counsel for the appellant.

6. Since, the appeal under Section 30 of Workmen's Compensation Act would lie only on substantial question of law and in the instant case, there is no substantial question of law, therefore, the appeal being devoid of merit is **dismissed**.

Order Date :- 18.10.2023

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