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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 502 OF 2017

National Insurance Co. Ltd.
Royal Insurance Building,
12, J. Tata Road, Mumbai – 400 020.
through its Mumbai Regional Office – II,
5th Floor, Sterling Cinema Building,
Murzban Street, Fort, Mumbai – 400 001.

... Appellant

Versus

1. Shri Shamshad Shaukatali Ansari
R/at Vitthal Nagar, Sakurwadi,
M.G. Road, Borivali (E), Mumbai
2. Mr. Shabuddin S. Mirza
New Sangam Auto Garage, Malji Pada,
Vasai, Dist. Thane – 401 209.

... Respondents

**WITH
CIVIL APPLICATION NO. 3502 OF 2015
IN
FIRST APPEAL NO. 502 OF 2017**

Shri Shamshad Shaukatali Ansari
R/at Vitthal Nagar, Sakurwadi,
M.G. Road, Borivali (E), Mumbai

... Applicant

IN THE MATTER BETWEEN :-

National Insurance Co. Ltd.
Royal Insurance Building,
12, J. Tata Road, Mumbai – 400 020.
through its Mumbai Regional Office – II,
5th Floor, Sterling Cinema Building,
Murzban Street, Fort, Mumbai – 400 001.

... Appellant

Versus

1. Shri Shamshad Shaukatali Ansari
R/at Vitthal Nagar, Sakurwadi,
M.G. Road, Borivali (E), Mumbai

2. Mr. Shabuddin S. Mirza
New Sangam Auto Garage, Malji Pada,
Vasai, Dist. Thane – 401 209.

... Respondents

.....
Ms. Harshada M. Rane for the Appellant.

Mr. Devendranath S. Joshi for the Respondent in FA/502/2017 and
Applicant in CAF/3502/2015.

.....

CORAM : R.D. DHANUKA, J.

RESERVED ON : 10th DECEMBER, 2019

PRONOUNCED ON : 3rd JANUARY, 2020

JUDGMENT :

. By this appeal, the appellant (original Insurer) has impugned the judgment dated 4th May, 2013 passed by the learned Commissioner under Workmen's Compensation and Judge, Eleventh Labour Court, Mumbai (hereinafter referred as "learned authority") in Application (WCA) No. 751/C-275 of 2006 directing the appellant and the respondent no.2 (original opponent no.1) jointly and severally to pay sum of Rs.2,06,668/- with interest @ 12% p.a. from the date of completion of 30 days i.e. 13th August, 2006 till its realization along with Rs.10,000/- by way of penalty to be paid by the respondent no.2 herein.

2. The respondent no.2 herein has not impugned the said judgment delivered by the Trial Court. By consent of the appellant and the respondent no.1 (original applicant), this First Appeal is heard finally at the admission

stage. Some of the relevant facts for the purpose of deciding this appeal are as under:-

3. It was the case of the respondent no.1 that the respondent no.1 was in the employment of the respondent no.2 and while driving motor vehicle bearing registration no. M/Tempo No. MH-04-CP-2611, he met with an accident on 13th July, 2006 at Malad Western Express Highway and sustained serious injuries. The respondent no.2 was the owner of the said vehicle who had obtained insurance policy from the appellant. According to the respondent no.1, in the said accident, he suffered a fracture (Rt) Tibia Condyle of knee joint and multiple serious injuries. The respondent no.1 was admitted to Bhagwati Hospital on 13th July, 2006 and was shifted to Punit Orthopedic Surgical Hospital, Borivali on 19th July, 2006 and was discharged on 19th September, 2006.

4. The consequence of the said injuries was that the respondent no.1 whose occupation was that of a driver could not be continued in future due to the respondent no.1 having suffered 100% loss of earning capacity. The respondent no.1 made a claim against the appellant and the respondent no.2 in sum of Rs.5,16,672/- as compensation. The said claim was resisted by the appellant by filing written statement dated 15th December, 2012. In the said written statement, the appellant denied that the respondent no.1 was aged 26 years old and was drawing wages of Rs.4,000/- at the time of accident.

5. The appellant denied its liability to pay any compensation to the respondent no.1 till age and wage proof was submitted by the respondent no.1. It was also alleged in the said written statement that at the time of accident, the driver of motor tempo no. MH-04-CP-2611 who was alleged to be involved in the accident did not hold valid and effective driving licence to drive the vehicle and had thus committed breach of conditions of policy. The appellant was thus not liable to pay any compensation to the respondent no.1 and/or indemnify the respondent no.2.

6. Learned counsel for Workmen's Compensation and Judge, Eleventh Labour Court, Mumbai framed 5 issues for determination. The respondent no.1 himself entered the witness box and filed affidavit in lieu of examination-in-chief dated 12th November, 2012. The respondent no.1 annexed several documents such as copy of WC application, register and notice sent to the respondent no.2 and the appellant, copy of driving licence which contained the date of birth of the respondent no.1, certified police papers, original hospital papers, discharge card, xrays, original permanent disablement certificate issued by Dr. Naresh Khanna, original salary certificate given by the employer, copy of WC Claim Form given by the employer, insurance policy, etc. The respondent no.1 examined by the learned advocate for the appellant.

7. The respondent no.2 also filed a written statement dated 6th October, 2012. In paragraph 2 of the said affidavit, the respondent no.2 admitted that the respondent no.1 was working with him as a driver and had met with an accident on 13th July, 2006 at Malad Western Express Highway while driving his vehicle bearing registration no. MH-04-CP-2611. The said vehicle was insured with the appellant and covered the accident period. He further stated in the said written statement that he was paying salary of Rs.4,000/- p.m. to the respondent no.1. He contended in the said written statement that all the liability was of the appellant to pay the claim amount along with the interest of penalty, if any awarded by the learned authority in the said claim application filed by the respondent no.1.

8. Shri Alimuddin Shamshuddin Mirza, brother of the respondent no.2 and who claimed to be a partner of Heena Transport and constituted attorney of the respondent no.2 entered the witness box on behalf of the respondent no.2 and filed an affidavit in lieu of examination-in-chief dated 5th January, 2013. In the said affidavit in lieu of examination-in-chief, he deposed that the respondent no. 1 was working with the respondent no.2 as a driver of the vehicle no. MH04-CP-2611 and had sustained serious injuries during the course of his employment with his brother. The respondent no.1 was getting salary of Rs.4,000/- p.m. at the time of his accident. The respondent no.1 was holding valid driving licence at the time of accident. After such accident, he had become disabled and had left the job.

9. In paragraph 5 of the said affidavit, it was deposed that in respect of the offending vehicle, the respondent no.2 had taken insurance policy from the appellant and the said policy was valid at the time of accident. The respondent no.2 had already paid premium for the said vehicle and his driver. It was deposed that all the liabilities were of the appellant to pay the amount to the respondent no.1. Along with the said affidavit the respondent no.1 produced various documents. The said witness was cross-examined by the appellant's advocate and also by the advocate for the respondent no.1. The appellant filed an application for filing certified copy of the RTO extract of the driving licence in support of his contention that the respondent no.1 who was driving the said vehicle was holding driving licence to drive the light motor vehicles and not heavy goods vehicle.

10. The respondent nos.1 and 2 filed written arguments before the Trial Court. By a judgment and award dated 4th May, 2013 passed by the Trial Court, the appellant as well as the respondent no.2 were directed to pay compensation of Rs.2,06,668/- along with interest @ 12% p.a. from the date of completion of 30 days i.e. 13th August, 2006 till its realization along with Rs.10,000/- by way of penalty to be paid by the respondent no.2.

11. Learned counsel for the appellant invited my attention to some of the paragraphs from the pleadings filed by the parties, deposition of the

respondent nos.1 and 2 including their cross-examination by the appellant, various findings rendered by the Trial Court. It is submitted by the learned counsel that neither respondent no.1 nor respondent no.2 could prove the relationship of an employer-employee and thus on that ground itself, the Trial Court could not have awarded any compensation against the appellant. The burden was on the respondent nos. 1 and 2 to prove such employer-employee relationship between them. The finding rendered by the Trial Court that their existed relationship of employer-employee between the respondent nos. 1 and 2 is based on no evidence.

12. It is submitted that the respondent was not injured at the time of accident but got himself injured while jumping out of the tempo after being chased by the public for causing death of a police personnel by the said offending vehicle. She submits that separate proceedings are filed by the legal heirs and representatives of the said police personnel who expired in the said accident committed by the said offending vehicle. She submits that the injuries thus sustained by the respondent no.1 was not during the course of the employment of the respondent no.1 with respondent no.2. There was no nexus between the accident and the injury of the respondent no.1 with his employment.

13. Learned counsel for the appellant invited my attention to the letter dated 5th January, 2013 addressed by the Heena Transport allegedly signed

by the respondent no.2 filed before the Trial Court by authorizing his brother Mr. Alimuddin Shamshuddin Mirza who was allegedly a partner in the said business and was looking after the business to give evidence on his behalf. She submits that the said constituted attorney of the respondent had no personal knowledge about the said accident and thus his evidence led as a constituted attorney of the respondent no.2 could not have been considered by the Trial Court. She submits that the said witness examined by the respondent no.2 in any event could not prove the relationship of the employer-employee between the respondent nos. 1 and 2. She invited my attention to the cross-examination of the said witness admitting that the respondent no.2 had not maintained any record about the salary. She submits that the claim made by the respondent no.1 based on the alleged accident was made by the respondent no.1 in collusion with the respondent no.2. Thus no compensation could have been awarded by the Trial Court against the appellant.

14. Learned counsel placed reliance on the FIR forming part of the compilation of documents and would submit that the victim was not taken to the hospital by the respondent no.1 immediately. The Trial Court could not have awarded 40% towards loss of earning capacity. Learned Counsel for the appellant invited my attention to the evidence led by Dr. Naresh Madanlal Khanna who was examined as a witness by the respondent no.1 deposing that he had assessed the disability of the respondent no.1 to 55%

partial permanent disability and deposing that the respondent no.1 would not be able to drive in future. She submits that in the cross-examination of the said witness, he admitted that he had examined the respondent no.1 cleanically and radiologically. He had only done the screening. No x-ray was taken. There was no separate report of screening. She submits that the deposition of the said witness that the respondent no.1 would not be able to drive the vehicle in future was his opinion. The said witness did not ask the respondent no.1 to bring any certificate from the Government authority to show that the respondent no.1 would not be able to drive any vehicle in future.

15. It is submitted by the learned counsel that the Doctor who had treated the respondent no.1 i.e. Dr. Ramesh K. Patel from Punit Orthopedic Surgical Hospital was not examined as a witness by the respondent no.1. No bills were produced by respondent no.1. No eye witness was examined by him. Respondent No.2 who claimed to be the owner of the said offending vehicle, which was insured with the appellant himself did not enter the witness box.

16. Learned counsel placed reliance on the medical prescription dated 13th July, 2006 produced in evidence by the respondent no.1 and would submit that the said document would show that the respondent no.1 had sustained injuries due to fall while jumping from the vehicle. She submits that the respondent no.1 has admittedly not surrendered his licence to the RTO and

that itself would indicate that the Trial Court could not have considered the claim of 40% loss of earning capacity. She submits that since the respondent no.1 had run away from the spot of accident, no benefit by way of any compensation can be given to the respondent no.1 who is not a law abiding citizen.

17. Mr. D.S. Joshi, learned counsel for the respondent no.1 (original applicant) on the other hand strongly placed reliance on the first proviso to Section 30 of Employee's Compensation Act, 1923 and would submit that no appeal shall lie against any order passed by the Commissioner under the said provision unless a substantial question of law is involved in the appeal. He submits that the first appeal filed by the appellant does not raise any substantial question of law or not even question of law. The learned counsel for the appellant has addressed this Court only on the factual aspect.

18. It is submitted by the learned counsel that the issue of negligence raised by the appellant while challenging the judgment delivered by the Trial Court cannot be considered under the provisions of the Employee's Compensation Act, 1923. The question that is required to be considered by this Court in the first appeal is whether the relationship of an employer-employee between the respondent nos. 1 and 2 had been proved or not and whether the injury suffered by the respondent no.1 was during the course of his employment with respondent no.2 or not. Issue of negligence is not

relevant for the purpose of deciding compensation under the provisions of the Employee's Compensation Act, 1923. In his alternate submission, learned counsel submits that even otherwise no evidence was led by the appellant to prove the negligence of the respondent no.1 when the accident took place, before the Trial Court.

19. Learned counsel for the respondent no.1 invited my attention to the application filed by his client before the Trial Court and would submit that it was specifically pleaded by the respondent no.1 that he had sustained injuries during the course of his employment with the respondent no.2 and was aged 26 years and was getting salary of Rs.4,000/- p.m. at the time of accident. He also invited my attention to the written statement filed by the respondent no.2 on 6th October, 2012 and more particularly paragraphs 2 and 3 and would submit that the respondent no.2 had admitted in the said written statement that the respondent no.1 was working with him as a driver and had met with an accident on 13th July, 2006 at Malad Western Express Highway while driving the offending vehicle which was insured with the appellant which covered the accident period. In the said written statement, the respondent no.2 also submitted that he used to pay the respondent no.1 salary of Rs.4,000/- p.m. In the said written statement, the learned counsel also prayed that all the liability was of the appellant to pay the claim amount along with interest and penalty, if any awarded by the Trial Court. He submits that the respondent no.2 thus has admitted the employer-employee

relationship between the respondent nos. 1 and 2.

20. Learned counsel for the respondent no.1 invited my attention to the averments made in the written statement dated 15th December, 2012 filed by the appellant. He submits that in the said written statement, the appellant has only denied that the respondent no.1 was aged about 26 years and was drawing wages of Rs.4,000/- p.m. at the time of the accident. The appellant had not denied that the respondent no.1 was working with the respondent no.2 at the time of the accident. The appellant had also pleaded in paragraph 2 that the appellant is not liable to pay compensation to the respondent no.1 as prayed till the age and wage proof is submitted by the respondent no.1.

21. Learned counsel for the respondent no.1 invited my attention to the statement of the respondent no.2 recorded before the Police Inspector, Samta Nagar Police Station, Mumbai admitting that the respondent no.1 was employed with the respondent no.2. The appellant did not deny the correctness of the said statement made by the respondent no.2 before the police station and did not lead any evidence contrary to the documents produced and the evidence led by the respondent nos. 1 and 2. He submits that the appellant did not dispute that the respondent no.1 was driving the offending vehicle nor produced any contrary evidence before the Trial Court.

22. In so far as the submission of the learned counsel for the appellant that the evidence of the constituted attorney of the respondent no.2 could not have been considered by the Trial Court is concerned, learned counsel invited my attention to the letter dated 5th January, 2013 filed by the respondent no.2 before the Trial Court thereby authorizing Mr. Alimuddin Shamshuddin Mirza to give evidence on behalf of the respondent no.2. He submits that in the said letter, it was clearly mentioned that the said witness was also a partner in the business of the respondent no.2 and was looking after the business and was dealing with all the drivers and the cleaners and was looking after the legal matters. He submits that the said witness had filed an affidavit of evidence dated 10th January, 2013. The said evidence was led by the said witness based on his personal knowledge. In the said affidavit, the said witness deposed that the respondent no.1 was having valid driving licence at the time of accident. After the accident, since he had become disabled, he had left the job.

23. Learned counsel invited my attention to the cross-examination of the said witness examined by the respondent no.2. The said witness admitted that the respondent no.1 was injured and was employed by the respondent no.2 since 4 years prior to the date of accident and was unable to do the job after the said accident and thus left his job. The respondent no.2 was to make payment of salary of Rs.4,000/- p.m. in cash to the respondent no.1. Salary certificate dated 4th September, 2006 was signed by the respondent no.2, the

partner of Heena Transport. He submits that a suggestion was put to the said witness by the appellant's advocate that the respondent no.1 was not employed by the respondent no.2 and had not paid salary of Rs.4,000/- to the respondent no.1. He submits that the said suggestion put to the respondent no.1 was denied by the said witness. The appellant did not lead any contrary evidence before the Trial Court.

24. In so far as the issue of disability of the respondent no.1 raised by the appellant is concerned, learned counsel placed reliance on the prescription (medical record) dated 13th July, 2006 issued by the Municipal Corporation of Greater Mumbai, making an endorsement that the respondent no.1 had suffered due to fall while jumping from the vehicle. He also strongly placed reliance on the medical certificate issued by Punit Orthopedic Surgical Hospital dated 27th July, 2006 and other medical records issued by the said hospital who was treating the respondent no.1. It was submitted that the respondent no.1 was admitted in the said Punit Orthopedic Surgical Hospital for quite sometime. Learned counsel placed reliance upon various medical papers annexed to the compilation of documents and forming part of evidence before the Trial Court. He submits that there was no challenge to the authenticity of these documents by the appellant before the Trial Court.

25. Learned counsel for the respondent no.1 placed reliance on the affidavit in lieu of examination-in-chief filed by Dr. Naresh Khanna,

Orthopedic Surgeon, who deposed that he had examined the respondent no.1 on 10th December, 2009 for assessment of disability. The said Doctor had perused the hospital papers and found various injuries suffered by the respondent no.1. He submits that the said Doctor had examined the respondent no.1 cleanically and radiologically and had found those disabilities on him as mentioned in the certificate issued by him. He identified the said certificate issued by him and deposed that the respondent no.1 would not be able to drive in future. The said witness was cross-examined by the appellant.

26. It is submitted that the said Doctor confirmed in his cross-examination that he had cleanically and radiologically examined the respondent no.1. He denied the suggestion that he had issued the disability certificate based on earlier treatment papers. It was his opinion that the respondent no.1 will not be able to drive the vehicle in future that was mentioned in his certificate. The appellant did not lead any contrary evidence and put various suggestions to the said Doctor examined by the respondent no.1. No suggestion was put to the said Doctor that the said Doctor had issued any false disability certificate to the respondent no.1. He submits that the appellant thus cannot be allowed to challenge the said certificate at this stage.

27. Learned counsel for the respondent no.1 submits that though

according to the said Doctor's certificate, the respondent no.1 had suffered partial permanent disability of 55%, the Trial Court has considered only 40% of the partial permanent disability in the impugned judgment and has awarded compensation accordingly. He submits that the respondent no.1 thereafter could not drive any vehicle. It is submitted by the learned counsel that various findings of fact rendered by the Trial Court are based on the oral and documentary evidence led by the respondent nos. 1 and 2 which cannot be interfered with by this Court, in view of there being limited scope under Section 30 of the Employee's Compensation Act, 1923.

28. In so far as the quantification of the claim is concerned, it is submitted by the learned counsel that witness examined by the respondent no.2 had produced a certificate certifying that the respondent no.1 was working with the respondent no.2 as a driver of vehicle bearing registration no. M/Tempo No. MH-04-CP-2611 and had met with an accident on 13th July, 2006 and sustained serious injuries. He was getting salary of Rs.4,000/- per month and was unable to work after the said accident occurred and had left the job. He submits that no evidence contrary to the evidence laid by the respondent nos. 1 and 2 was led by the appellant on these questions of fact before the Trial Court.

29. It is submitted by the learned counsel for the respondent no.1 that a party to the proceedings can examine any witness who is familiar with the

facts. The respondent no.2 himself was thus not required to be examined before the Trial Court. The said witness examined by the respondent no.2 was familiar with the facts of the case and based on his personal knowledge had led evidence before the Trial Court.

30. Learned counsel for the appellant in the rejoinder submits that the appellant cannot be directed to lead any evidence in negative. In so far as the reliance placed on the statement of the respondent no.2 before the Inspector of Police, Santa Nagar Police Station, Mumbai is concerned, it is submitted by the learned counsel that in the said statement, it was alleged by the respondent no.2 that he was proprietor of New Sangam Auto Garaj. The respondent no.2 had many business and thus it was not proved before the Trial Court that the respondent no.1 was in the employment of the respondent no.2 in which business.

31. Mr. Joshi, learned counsel for the respondent no.1 submits that the Insurance Policy obtained by the respondent no.2 was in his individual name which is not disputed by the appellant.

REASONS AND CONCLUSION

32. The respondent no.1 (original claimant) had made a claim for compensation on the premise that he was in the employment of the respondent no.2 (original opponent no.1) whose vehicle was insured with the

appellant. While on duty, on 13th July, 2006, he met with an accident on Malad Western Express Highway and sustained injuries. He was admitted in the Bhagwati Hospital on 13th July, 2006 and was shifted to Punit Orthopedic Surgical Hospital on 19th July, 2006 and was discharged after treatment. The respondent no.1 himself entered the witness box. It was the case of the respondent no.1 that he was working as a driver with the respondent no.2 on the date of the accident on 13th July, 2006.

33. The appellant resisted the claim of the respondent no.1 by filing a written statement and denied that the said accident had occurred during the course of employment and arising out of employment. The appellant denied its liability to pay any compensation. It was also alleged that the respondent no.2 was not holding any valid and effective licence and appellant was thus not liable to pay any compensation to the respondent no.1.

34. A perusal of the proviso to Section 30 of Employees Compensation Act, 1923 clearly indicates that no appeal shall lie to the high Court from various orders prescribed therein unless a substantial question of law is involved in the appeal. Learned counsel for the appellant could not point out any substantial question of law or even any general question of law arising in this First Appeal but has made various submissions based on the findings of fact rendered by the Tribunal. In my view, since there is no substantial question of law in this First Appeal, this Court cannot go into the pure

findings of fact rendered by the Tribunal on appreciation of evidence led by the respondent nos. 1 and 2. I do not find any perversity in any of the findings rendered by the Tribunal. First Appeal under Section 30 can be entertained only if any substantial question of law arises out of the judgment and award rendered by the Trial Court and not otherwise.

35. In so far as the issue as to whether on the date of the said accident on 13th July, 2006, the respondent no.1 was on duty as a driver of vehicle bearing registration No. MH-04-CP-2611 during the course of employment and arising out of the employment is concerned, the respondent no.2 also filed written statement and admitted that the accident of the respondent no.1 occurred on 13th July, 2006 when he was in the employment of the respondent no.2 and the said accident had arisen out of the employment. In the said written statement filed by the respondent no.2, it was stated that he was paying salary of Rs.4,000/- p.m. to the respondent no.1 and confirmed that the said respondent no.1 had met with an accident on 13th July, 2006 at Malad Western Express Highway while driving his vehicle bearing registration No. MH-04-CP-2611 which vehicle was insured with the appellant and covered the accident period.

36. The respondent no.1 had also examined Dr. Naresh Madanlal Khanna who had examined the respondent no.1 clinically and radiologically and found six disabilities on him and issued a certificate certifying the disability

of the respondent no.1 at 55% i.e. partial permanent disability. The respondent no.1 also examined a witness from the office of his employer to prove that the respondent no.1 was in the employment of the said employer when the said accident had taken place and was being paid salary of Rs.4,000/- per month.

37. In so far as the submission of the learned counsel for the appellant that the respondent no.1 could not prove the relationship of an employer-employee and thus the Tribunal could not have awarded any compensation against the appellant is concerned, the respondent no.1 himself in his deposition had deposed that he was employed with Shamshad Shaukalli Ansari on the date of his accident and the said accident had taken place during the course of his employment and arising out of the employment. The respondent no.1 was cross-examined by the appellant. The respondent no.1 had also produced various medical records along with his affidavit in lieu of examination-in-chief. The employer had authorized his brother Mr.Alimuddin Shamshuddin Mirza who also claimed to be a partner in their business to give evidence on his behalf. The said Mr. Alimuddin Shamshuddin Mirza filed an affidavit in lieu of examination-in-chief and deposed that the respondent no.1 was working with his brother as a driver of his vehicle bearing registration No.MH-04-CP-2611 and had sustained serious injuries during the course of his employment with his brother.

38. It was further deposed that the respondent no.1 was getting salary of Rs.4,000/- p.m. and had valid driving licence at the time of accident. He also deposed that the respondent no.2 had obtained insurance policy from the appellant in respect of the said vehicle. The said witness was also cross-examined by the appellant. The respondent no.1 himself had produced an original salary certificate in his evidence before the Tribunal. The respondent no.1 had also produced the letter dated 5th January, 2013 from the employer of the respondent no.1 authorizing his brother to give evidence on his behalf. A perusal of the said authority letter clearly indicates that the said Mr. Alimuddin Shamshuddin Mirza was also a partner in the business with the employer of the respondent no.1 and was looking after the business and was dealing with all the drivers and cleaners and also the legal matters.

39. In his cross-examination, the said witness deposed that he had not maintained any record about the payment of salary. He denied the suggestion that the respondent no.1 was not paid of salary of Rs.4,000/- p.m. The said witness however identified the said salary certificate dated 4th September, 2006 which was signed by the employer of the respondent no.1. In my view, there was thus sufficient evidence on record to establish the relationship of an employer-employee between the said employer and the respondent no.1 and also to the effect that the respondent no.1 was being paid salary @ Rs.4,000/- p.m. and the said accident had occurred during the period of his employment and arising out of the employment with the said

employer Mr. Shabuddin S. Mirza.

40. In so far as the submission of the learned counsel for the appellant that no compensation could have been awarded to the respondent no.1 by the Trial Court on the ground that the respondent no.1 tried to run away from the spot of accident and while running away from the accident spot, he had allegedly sustained certain injuries is concerned, there is no merit in this submission of the learned counsel for the appellant. No such case was pleaded by the appellant before the Tribunal nor any such suggestion was put to the respondent no.1 when he was in witness box. The appellant did not examine any witness before the Trial Court.

41. In so far as quantum is concerned, learned counsel for the appellant strongly placed reliance on the evidence of Dr. Naresh Madanlal Khanna who had admittedly not treated the respondent no.1 but had given disability certificate to the extent of 55% to the respondent no.1. He had only examined the respondent no.1 clinically and radiologically. The said Doctor also did not ask the respondent no.1 to bring certificate from the Government Authority to show that the respondent no.1 would not be able to drive any vehicle in future.

42. A perusal of the finding rendered by the Tribunal indicates that the Tribunal has not considered the said disability certificate issued by the said

Dr. Naresh Madanlal Khanna but had awarded compensation on the basis of 40% loss of earning capacity. Claim of the respondent no.1 is thus substantially reduced based on the other evidence on record. The Tribunal has considered various other medical papers already produced on record and rendered various findings of facts.

43. In my view, the question whether any relationship of an employer-employee arises or not or whether the same is proved or not or whether the respondent no.1 himself was negligent when the said accident had occurred, all these issues are issues of fact and thus findings of fact rendered by the Tribunal after considering the oral and documentary evidence cannot be re-appreciated in view of the limited scope of appeal under Section 30 of the Employees Compensation Act, 1923.

44. A perusal of the written statement filed by the appellant before the Trial Court clearly indicates that the appellant had only denied that the respondent no.1 was aged 26 years and was drawing wages of Rs.4,000/- p.m. at the time of his accident. The appellant had not denied that the respondent no.1 was not working with the respondent no.2 at the time of his accident. It was a specific case of the appellant that the appellant was not liable to pay compensation to the respondent no.1 as prayed till his proof of age and payment of wage was submitted. In my view, the appellant on this ground also could not be allowed to raise the dispute about existence of

employer-employee relationship between the respondent nos. 1 and 2.

45. In any event, the respondent no.1 had proved his age and also the proof of salary by producing various documents and by examining himself and the brother of the respondent no.2. The respondent no.1 had also produced the driving licence to indicate his date of birth which document was also admitted in his evidence. The respondent no.2 had also made a statement before the Police Inspector, Samta Nagar Police Station, admitting that the respondent no.1 was in the employment with the respondent no.2. The appellant did not deny the correctness of the statement made by the respondent no.2 before the Police Station nor led any evidence contrary to the evidence led by the respondent nos. 1 and 2. The appellant did not dispute that the respondent no.1 was driving the said vehicle owned by the respondent no.2.

46. The appellant did not put any suggestion to Dr. Naresh Madanlal Khanna that the disability certificate issued by him was false and thus cannot be allowed to challenge the said disability certificate. Be that as it may, the Tribunal has not considered the said disability certificate while considering only 40% partial and permanent disability. The appellant did not dispute that the Insurance Policy obtained by the respondent no.2 was in his individual name. The respondent no.2 had specifically pleaded that the respondent no.1 was employed with him. There is thus no substance in the submission of the

learned counsel for the appellant that there were various business carried on by the respondent no.2 and thus it could not be proved by the respondent no.1 or by respondent no.2 as to with which firm of respondent no.2, the respondent no.1 was employed.

47. In so far as the quantum of claim allowed by the Tribunal is concerned, the Tribunal has considered the salary of Rs.4,000/- p.m. and has considered 40% disability. Considering the age of the respondent no.1, the Tribunal has multiplied the said salary of Rs.4,000/- p.m. by 60% and 215.28 while allowing compensation in accordance with the provisions of the Employees Compensation Act, 1923. I do not find any infirmity in the said amount of compensation awarded by the Trial Court. There is thus no merit in the First Appeal filed by the appellant.

48. I therefore pass the following order :-

- (i) First Appeal No. 502 of 2017 is dismissed. In view of the dismissal of the First Appeal, Civil Application No. 3502 of 2015 does not survive.
- (ii) The respondent no.1 would be at liberty to withdraw the amount deposited by the appellant with the Trial Court. If there is any shortfall in the deposit made by the appellant, the appellant shall deposit the balance amount within two weeks

from the date of computation of such shortfall by the Trial Court. If there is any surplus left after payment of the decreetal amount to the respondent no.1, the Trial Court to refund the said amount to the appellant.

- (iii) There shall be no order as to costs.
- (iv) Parties as well as the Trial Court to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)