

2. Brief facts of the case are as under :

On 25th March, 2000, respondent No.1-original applicant (for short "the applicant") was driving auto rikshaw. He was proceeding to Shivaji Chowk, at the relevant time, his auto rikshaw was dashed by another vehicle. In the said accident, he sustained serious injuries. He filed claim petition for getting compensation, which is allowed by the trial court. Against the said judgment and order, this appeal.

3. It is the contention of learned counsel for the appellant that no employee-employer relationship was proved between the applicant and respondent No.2 before the trial court, but, this fact is not considered by the trial court. Learned counsel further submits that the trial court has considered monthly income of the applicant @ Rs.2000/- per month which is on the higher side. The disability certificate produced by the applicant was not proper, in spite of that, it is considered by the trial court. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for respondent No.1 that the witness who has been examined by the appellant before the

trial court has admitted in his cross-examination that he did not meet the applicant. In spite of that, in the investigating report submitted by him to the appellant, he has stated there was no employee-employer relationship between the applicant and respondent No.2, which is false. The applicant was driving the auto rikshaw owned by respondent No.2. The trial court has considered all the aspects while awarding compensation. Hence, requested to dismiss the appeal.

5. I have heard both learned counsel, perused the judgment and order passed by the trial court. It is the contention of learned counsel for the appellant that monthly income of the applicant is considered on higher side i.e. Rs.2000/- per month. The applicant has deposed that he was getting Rs.2500/- per month but while calculating the compensation, the trial court has considered Rs.2,000/- per month on the basis of minimum wages applicable at the relevant time of accident, on that basis, compensation is awarded. As monthly income the the applicant is considered on the basis of Minimum Wages Act, hence, I do not find merit in the contention of learned counsel for the appellant that the income of the applicant was considered on higher side.

6. In respect of the disability certificate, the applicant has examined Expert Witness - Dr. Kshitij Shah at Ex.U-18. This witness has treated the applicant at Cooper Hospital, Mumbai, he has issued the disability certificate. In my view, this is an expert witness who has examined the applicant and, issued disability certificate. Cooper Hospital is a Government Hospital. So there is no question of doubting the disability of the applicant.

7. It is the contention of learned counsel for the appellant that employee-employer relationship is not proved. Though, the case against respondent No.2 proceeded ex-parte, admittedly, the auto rikshaw which was driven by the applicant belonged to respondent No.2. The trial court has observed that it proves that there was an employee- employer relationship between the applicant and respondent No.2. On the basis of investigation report submitted by the appellant's witness, the appellant is denying relationship of employer and employee. It is significant to note that the appellant's witness in cross-examination admitted that he never met the applicant, then the question remains on which basis he comes to the conclusion that there was no employer and employee relationship between the applicant and respondent No.2. It proves

that his investigation report is false.

8. In view of the above, the appeal is devoid of merit and I pass the following order :

1. The appeal is dismissed. No order as to costs.
2. Respondent No.1 (applicant) is permitted to withdraw the amount along with accrued interest thereon deposited by the appellant, if not withdrawn.

9. Pending civil applications, if any, will not survive for consideration and same are also disposed of.

(S. G. DIGE, J.)