

Item No. – 87
18.03.2025
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**FMA 1415 OF 2024
with
I.A. No.: CAN 1 of 2024**

**National Insurance Company Limited
Versus
Asad Mondal & Anr.**

Mr. Afroze Alam.

... for the appellant

1. The instant appeal under Section 30 of the Workmen's Compensation Act, 1923 is directed against the judgment and order dated 29th July, 2024 passed by the Commissioner, Employees' Compensation (1st Court), West Bengal, whereby, the Commissioner has allowed the claim case being Claim Case No. 13 of 2014 on contest and directed that the respondent No. 1 herein, i.e., the claimant, would be entitled to get compensation to the tune of Rs. 4,65,005/- together with simple interest accrued thereon at the rate of 12% per annum, commencing after expiry of one month from the date of accident till its realization from the National Insurance Company Limited, i.e., the appellant herein.
2. Since an appeal presented before this Court under Section 30 of the Workmen's Compensation Act, 1923 is required to be decided on the anvil as to whether or not the same involves a substantial question of law, we invited the learned advocate appearing for the appellant to demonstrate before us as to which is the substantial question of law that is involved in the present appeal.
3. The learned advocate appearing for the appellant tried to assert that the judgment and order passed by the

Commissioner, which has been impugned in the present appeal, is founded on an erroneous premise that there was an employer and employee relationship between the claimant and the opposite party No. 1 in the claim case. It has been sought to be contended that the claimant failed to prove before the Commissioner that the claimant was an employee under the opposite party No. 1 in Claim Case No. 13 of 2014.

4. We have perused the judgment and we have also gone through the depositions made by the witnesses before the Commissioner.
5. We find that the case run by the claimant before the Commissioner was that he was the employee of one Musharaf Sekh who has been arrayed as the opposite party No. 1 in the claim case. It is the specific case of the claimant in the claim case that he had been driving vehicle No. WB 51A/1458 which belonged to the said opposite party No. 1 in the claim case. The opposite party No. 1 has filed his written statement and has admitted the case of the claimant/respondent No. 1 before the Commissioner. The examination-in-chief of the claimant wholly supports the claimant's case. The claimant has specifically stated on oath that he was a driver of vehicle No. WB 51A/1458 owned by Mr. Musharaf Sekh. The claimant remained unshaken during the cross-examination and he reiterated that he met with an accident while he was driving vehicle No. WB 51A/1458 which was owned by Musaraf Sekh and that he was employed by the said Musaraf Sekh to drive his said vehicle. It can be gathered from a holistic reading of the deposition of the witnesses that the appellant herein has failed to put its specific case in cross-examination to the claimant. It is pertinent to note that there was no suggestion given on behalf of the appellant to the claimant/respondent in the cross-examination that there was no employer-employee

relationship between Musaraf Sekh and the claimant. This aspect leads to acceptance of the claimant's case by the appellant.

6. Reference in this regard may be made to the celebrated judgment rendered by this Court in the case of **A.E.G. Carapiet vs. A.Y. Derderian** reported at **AIR 1961 Cal 359** wherein it was held that whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It was also held that the aforesaid rule was not merely technical but a rule of essential justice. It has been held in the said case that a party while cross-examining is bound to put to his opponent's witness so much of his own case that concerns that particular witness and that if he does not do so or he asks no question with regard thereto, then he must be taken to accept the opponent's case in full.
7. In view of the aforesaid, we find that the only ground which was canvassed before us does not hold water.
8. The appeal is devoid of any question of law, much less, substantial question of law and therefore, the same is dismissed. In view of dismissal of the appeal, the connected application also stands dismissed.
9. No order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(HARISH TANDON, J.)

(OM NARAYAN RAI, J.)