

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 92 OF 2001
AND
CIVIL APPLICATION NO. 1480 OF 2001

1] The Executive Engineer,
 Maharashtra Jeevan Pradhikaran
 Works Division, Dhule

2] The Sub-Divisional Engineer,
 Maharashtra Jeevan Pradhikaran
 Sub-Division No.2, Dhule

.. Appellants/
 Applicants
 (Orig. resp. No.1 & 2)

VERSUS

1] Jeevan Shankar Borgaonkar,
 Age 28 years, Occu.: Nil,
 R/o. Near Bhatwal Theatre,
 Behind Ganesh Furniture,
 Deopur, Dhule

.. Orig. applicant

2] Nisar Nabbu Khatik,
 Age 43 years, Occu.: Service,
 R/o. Deopur Panchawati,
 Khatikwada, Dhule

.. (Orig. resp. no.3 added)

.. Respondents

WITH

CIVIL APPLICATION NO. 3061 OF 2004 IN FA/92/2001

(Jeevan Shankar Borgaonkar Vs. The Executive Engineer, Maharashtra
 Jeevan Pradhikaran Works Division, Dhule and ors.)

Mr. P.M. Bakshi, Advocate for the appellants (applicants in
 CA 1480/2001 and respondents in CA/3061/2004)

Mr. B.R. Warma, Advocate for respondent no.1 (applicant in
 CA/3061/2004)

Mr. K.C. Sant, Advocate for the respondent no.2

CORAM : M.T. JOSHI, J.

DATE : 23/02/2015

ORAL JUDGMENT :

1. Heard both sides.

2. Aggrieved by the direction to pay compensation in an application under section 4 of the Workmen's Compensation Act (for short "**the Act**"), the original respondent nos.1 and 2 have preferred the present appeal.

3. As per the respondent no.1 i.e. the original applicant, he was working as a coolie with the present appellants and the other original respondents. On 31/3/1995, he was directed by original respondent no.3 i.e. the driver of the truck to load the cement bags of the present appellants from godown to the truck. In the circumstances, all of a sudden cement bags fell on his left leg and he suffered injuries. He was admitted to the Civil Hospital for two times. Operations were performed on his leg and in the circumstances, by giving all the details, he claimed compensation of Rs.1,20,990/-.

4. The present appellants came with a case that there was no relationship of employer and employee between the present appellants and respondent no.1. They had not engaged respondent no.1. It was denied

that the accident has taken place in the course of employment and, therefore, by denying all the consequential details regarding compensation, the present appellants wanted that the appeal be dismissed.

5. Original respondent no.3 i.e. the driver of the truck submitted that the claim is not maintainable as against him.

6. Before the learned Commissioner, the copies of the statements recorded by the Police immediately after the incident were pressed into service to show that on the date of the accident, the respondent no.1 was working as a coolie and that he has suffered the injuries as detailed by him. The documentary evidence regarding the admission of the respondent no.1 in the hospital was also placed on record. Original respondent no.3 - driver in his cross-examination has also admitted the fact of engagement of respondent no.1. In that view of the matter, taking into consideration all the overall facts, the learned Commissioner granted compensation of Rs.51,487/- with interest @ 6% per annum from the date of filing of the application.

7. Mr. Bakshi, learned counsel for the appellants submits that coolie would not come within the definition of the "workman" as there was no regular employment of the respondent no.2 with the respondent no.1.

8. The appeal was admitted on 13/6/2001. It however appears that no substantial question of law was framed.

9. It should be noted that the present appellants nowhere pleaded that since the respondent no.1 was coolie, he would not be "workman" within the definition of section 2(1)(n) of the Act. They simply pleaded that they themselves had not engaged the respondent no.1. Even it should be noted that the learned Commissioner has taken into consideration that even the principal would be liable for payment of compensation under the provisions of the Act. In the circumstances, in-fact, no substantial question of law has arisen in the present appeal. The appeal is therefore dismissed without any order as to costs.

10. Consequently, Civil Application no. 1480 of 2001 seeking direction of this Court stands disposed of

and Civil Application no. 3061 of 2004 seeking
withdrawal of the amount stands allowed.

[M.T. JOSHI]
JUDGE

arp/