

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 576 OF 2001

Bharat S/o Dagdu Movare,
Age 27 years, Occu.: Nil,
R/o Gopalpur, Tq. Dharur,
Dist. Beed

.. Appellant/
Orig. Petitioner

VERSUS

Raghunath S/o Vishwanath Mundhe,
Age 45 years, OCCU.: Agricultre,
R/o Gopalpur, Tq. Dharur,
Dist. Beed

.. Respondent/
Orig. Respondent

Mr. V.V. Bhavthankar, Advocate for the appellant
Mr. B.N. Palve, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 03/03/2015

ORAL JUDGMENT :

1. Heard learned counsel for the appellant. Learned counsel for the respondent is not ready to argue the matter. The record would show that since 16/1/2015, both sides were called. Learned counsel for the respondent remained absent on four occasions and today, on the fifth occasion, he submits that he has no instructions from the respondent. In the circumstances, the appeal is heard exparte in absence of the respondent

since there are no arguments from the side of the learned counsel for the respondent.

2. Present appeal is filed by the original applicant who had filed application under section 4 of the Workmen's Compensation Act before the concerned Commissioner for getting the compensation for the injuries suffered by him.

3. Brief pleadings of the appellant are as under:-

. That while working on the threshing machine of the present respondent in the field of one Dinesh Shukla, the appellant suffered accident as his right hand fell in the machine and the same was crushed. He was shifted to Swami Ramanand Teerth Medical College and Hospital, Ambajogai and was an indoor patient for one month. He has become 75% permanently disabled. Upon regaining health, he issued notice to the respondent. The respondent, however, failed to reply the same. Complaint was lodged with the Police. Police did not take any action and in the circumstances, compensation of Rs.1,00,000/- was claimed from the respondent.

. Respondent denied that he owned any thresher machine or there was any relationship of employer-employee between them. In the circumstances, he wanted that the application be dismissed.

4. Before the learned Commissioner, the appellant examined himself supported by P.W.2 - Raghunath Shedwad, who claimed to be an eye witness to the accident. The learned Commissioner came to the conclusion that the appellant failed to prove that while working on the threshing machine of the present respondent as an employee, the accident has occurred and, therefore, the application came to be dismissed.

5. Learned counsel for the appellant Mr. Bhavthankar submits that the learned Commissioner overlooked the material on record i.e. filing of the complaint with the Police, the discharge card of the Government Hospital and the fact that though notice was served on the present respondent, he failed to reply the same and more particularly, the positive evidence of P.W.2 Raghunath Shedwad.

6. With the aid of learned counsel for the appellant Mr. Bhavthankar, I have gone through the record of the case.

7. On the basis of the above material, following substantial question of law has arisen before me:-

. Whether the learned Commissioner has committed patent error in appreciating the evidence on record regarding the employer-employee relationship between the parties?

My finding to the above point is in the affirmative. The appeal is therefore allowed for the reasons to follow.

R E A S O N S

8. The facts on record would show that on the date of the alleged accident, the appellant was admitted to the Government Hospital. The discharge card at Exhibit 24 of the Government Hospital would show that the appellant was admitted in the Hospital with the crush injury to his right elbow. The Medical Certificate as

orthopaedically Handicapped at Exhibit 25 issued by the Government Hospital would show that the appellant's hand is amputated from the elbow. The notice served on the respondent is admittedly not replied by him.

9. P.W. 2 Raghunath of the same village deposed that the appellant was an employee on the threshing machine of the present respondent. On the date of the accident while he was working in the field he has noticed the accident. During cross-examination, nothing concrete could come up. As against the positive statement in the examination-in-chief that the appellant was employed as an employee over the threshing machine of the present respondent, no suggestion in cross-examination was given that the appellant was not the employee of the respondent. It was merely suggested that on the instigation of one Dinesh Shukla, the witness was giving the false deposition.

10. All the material on record would point towards the probability that there was an employer-employee relationship between the parties. The learned Commissioner, however, examined the merit of the case, to find out whether the facts are proved beyond

reasonable doubt. While dealing with the benevolent provisions of the Workmen's Compensation Act for grant of compensation, when all the circumstances point towards the fact of employer-employee relationship of the parties, the findings of the learned Commissioner, according to me, are patently wrong. In the circumstances, it is held that the accident has occurred during the course and out of the employment of the appellant with the respondent.

11. This takes me to decide the issue of compensation. As already pointed out, the evidence on record would show that the right hand of the appellant is amputated from the forearm. He was admitted for one month in the Government Hospital. When the appellant is a labour, whose right hand is amputated, naturally, the permanent disability caused to him would be 100% qua his occupation.

12. The discharge card at exhibit 24 would show that at the time of admission of the appellant in the hospital, he was 22 years old. Considering all these facts on record, even if the factor as available under the provisions of the Workmen's Compensation Act is

applied, the appellant would be entitled for grant of the compensation.

13. In the result, the following order:-

I) The appeal is hereby allowed with costs.

II) The respondent is directed to pay the appellant an amount of Rs.1,00,000/- with interest @ 12% per annum from the date of the accident till recovery of the same.

14. Considering all the facts on record, no order regarding the penalty.

Sd/-
[M.T. JOSHI]
JUDGE

arp/