

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1338 OF 2014

Sow. Vidyabai Sudhakar Walekar, Resident
of Limbejalgaon, Taluka Gangapur, District
Aurangabad

APPELLANT

V E R S U S

1] Balnath Chagan Adhave, Age 45 years,
Occupation Labour

RESPONDENTS

2] Ku. Bhagayshree Balnath Adhave, Age 06
years, Occupation Student

3] KU. Yogita Balnath Adhave, Age 09 years,
Occupation Student

4] Ku. Bhagirthy Balnath Adhave, AGE 11 years,
Occupation Student

Respondent Nos.2 to 4 are under
guardianship of Respondent No.1,
Respondent Nos.1 to 4 are Resident of
Yesgaon, Taluka Gangapur

5] Prabhakar Bhaganappa Walekar, Resident of
Limbejalgaon, Taluka Gangapur, District
Aurangabad

Mr. Sachin V. Dankh, Advocate for Appellant
Mr. R.K. Khandelwal, Advocate for Respondent Nos.1 to 4

CORAM : A.M. BADAR, J.

DATE : 3rd DECEMBER, 2015

ORAL JUDGMENT :

1. This is Appeal by Respondent no.1 - alleged employer who suffered an order directing payment of compensation alongwith penalty of 50% of the amount of compensation on account of death of Sumitrabai Balnath Adhave. The Appellant - original Respondent no.1 is therefore challenging the judgment and order dated 20th September, 2013, passed by the learned Commissioner under the Employees Compensation Act, 1923, in W.C. Application No. 57 of 2009. Respondent nos.1 to 4 herein were original applicants - claimants. Respondent no.5 herein was the original Respondent no.2. For the sake convenience, parties shall be referred to in their original capacity.

2. ***Facts in nutshell are thus :-***

Original claimants moved an application claiming compensation on account of death of Sumitrabai Adhave as well as her daughter before the Commissioner under Employee's Compensation Act, under Section 10 of the said Act. It is the case of applicants that they are legal representatives of deceased Sumitrabai Adhave, who was engaged as labourer by Respondent no.1 - Vidhyabai Walekar. Deceased Sumitrabai Adhave was employed as labourer in the agricultural land

bearing Gat No.41 of village Bhoygaon, Taluka Gangapur. This land is owned by Respondent no.1 – Vidhyabai Walekar. Deceased Sumitrabai Adhave used to work under control of Respondent no.2 – Prabhakar Walekar. Applicants further contended that on 21st January, 2009 deceased Sumitrabai Adhave was fetching motor from the well situated in the field Gat No. 41 of village Bhoygaon. At that time pipe of electric motor broke down and deceased Sumitrabai Adhave alongwith her daughter Renuka suffered a fall in the well. Because of this accident Sumitrabai Adhave and her daughter Renuka died due to drowning.

3. It is the case of applicants that this accident causing death of Sumitrabai Adhave arose out of and in the course of her employment with respondent no.1 – Vidyabai Walekar and respondent no.2 – Prabhakar Walekar, who is stated to be father-in-law of respondent no.1 – Vidyabai Walekar. By contending that deceased Sumitrabai Adhave was earning salary of Rs.3,000/- per month and that at the time of her death she was 35 years old, applicants claimed amount of Rs.2.95 Lacs towards compensation on account of her death. In the instant appeal we are concerned with this claim and as such it is not necessary to dwell upon other aspects of the matter including claim in respect of death of Ku.

Renuka.

4. Respondents opposed the claim by filing written statement at Exhibit C-15 and denied each and every adverse averments regarding employment of deceased Sumitrabai Adhave as labourer by respondent no.1 – Vidyabai Walekar on agricultural land at Gat No.41 at village Bhoygaon. However, respondents admitted that this land is owned by respondent no.1 – Vidyabai Walekar. According to respondents, applicant no.1 is *Bataidar* of the said agricultural land. Respondents admitted that Sumitrabai Adhave and her daughter felled down in the well and died due to drowning. It is further averred that respondent paid some amount to applicant no.1 on humanitarian ground. According to respondents, applicant no.1 - Balnath is attempting to pressurize respondent no.1 by filing the application for compensation in order to avoid recovery of the amount paid to him. Respondents denied that Sumitrabai Adhave was their employee on daily wages on salary of Rs.3,000/- per month. According to them, without their knowledge applicant no.1, *Bataidar* started residing at the agricultural land alongwith his family.

5. On the basis of rival pleadings, the learned Commissioner

framed issues and parties went for trial. In support of their claim, applicant No.1 – Balnath tendred his evidence on affidavit at Exhibit U-1 and 23. He was subjected to cross-examination. He also adduced evidence of one Kantilal Rajput – owner of adjoining agricultural field at Exhibit U – 19. Reliance is also placed on police papers in respect of incident in question. In rebuttal, respondents examined respondent no.1 – Vidyabai Walekar.

6. After hearing the parties, the learned Commissioner concluded that deceased Sumitrabai Adhave died in an accident arising out of and in the course of her employment with respondent no.1 and accordingly the compensation was awarded to applicants alongwith 50% penalty on the amount of compensation. However, claim of compensation as against respondent no.2 – Prabhakar Walekar was rejected.

7. Heard Shri S.V. Dankh, learned counsel appearing for the appellant. By taking me through the entire oral as well as documentary evidence on record, he urged that there is no evidence on record to show that deceased Sumitrabai Adhave was an employee of respondent no.1 – Vidyabai Walekar. He further argued that evidence of applicants does not

show what labour work the deceased was doing at the agricultural field. He further submitted that evidence of witness no.1 – Kantilal Rajput is not worthy of acceptance as he was not knowing whether applicant no.1 and his deceased wife Sumitabai were *Saldar* in the agricultural field of respondent no.1 – Vidhyabai Walekar. By drawing my attention to the application filed by respondent for transposing applicant no.1 as respondent, Shri S.V. Dankh, learned counsel for the appellant argued that ultimately the learned Commissioner came to the conclusion that claim against respondent no.2 is not maintainable. This according to the learned counsel goes to show that employer – employee relationship between the respondents and deceased Sumitrabai Adhave was not at all established. He further argued that as respondents denied such relationship, the matter was warranting adjudication of Court of law and as such the learned Commissioner is not justified in imposing penalty of 50% of the amount of compensation. As against this, the learned counsel appearing for respondents, original applications supported the impugned judgment and order.

8. With the assistance of the learned counsels for the parties I have carefully gone through the record and proceedings in respect of oral

as well as documentary evidence.

9. This is an Appeal under Section 30 of the Employees Compensation Act, 1923. As such it can be entertained only when substantial question of law is demonstrated. Finding of fact by overlooking material evidence or relying on inadmissible evidence or wrong appreciation of law can give rise to the substantial question of law. However, pure finding of fact based on admissible evidence on record cannot be subject matter of Appeal under Section 30 of the Employees compensation Act.

10. In the case in hand, undisputedly respondent no.1- Vidyabai Walekar is owner of field Gat no.41, situated at village Bhoygaon in Gangapur Taluka. It is not in dispute that the incident of accidental death of Sumitrabai Adhave occurred at the well situated in the field owned by respondent no.1. This incident occurred on 22nd January, 2009 was immediately reported to police by Mr. Kalyan Ghate, Police Patil of village Bhoygaon, resulting in registration of accidental death case. During the course of enquiry of this accidental death case, panchnama of scene of occurrence came to be recorded by the police. Broken pipe was found at

the spot of incident. The spot panchnama has mentioned the fact that the electric motor of the well and wire had fallen inside the well. In the wake of this situation reflected in the report and spot panchnama recorded during inquiry of the accidental death case (Exhibit U-10 and U-11), evidence on record needs to be appreciated. At any rate the record shows that there was broken pipe at the well and electric motor on the well was sub-merged in the water alongwith its cable. This in my opinion answers the questions posed by the learned counsel for the appellant as to what work the deceased was doing at the well. She was pulling up the electric motor. It is further clarified from the oral evidence found on record.

11. Evidence of applicant Balnath Adhave shows that his wife Sumitrabai was employed by respondent no.1 – Vidyabai Walekar as labourer on salary of Rs.3,000/- per month and her work was used to be controlled by respondent no.2 – Prabhakar Walekar. This witness deposed that on 22nd January, 2009 when Sumitrabai Adhave was working in the agricultural field and precisely fetching electric motor from the well, water pipe of that electric motor was broken causing fall of Sumitrabai Adhave in the well. As such, evidence of Mr. Balnath Adhave shows that deceased was trying to take out electric motor from the well.

Consequently it is clear that she was doing a labour work at that field owned by respondent no.1 – Vidhyabai.

12. Necessary corroboration to the version of Mr. Balnath Adhave comes from evidence of neighbourer Mr. Kantilal Rajput. His version reveals that he had reached the spot soon after the occurrence he being the neighbourer. He witnessed the post incident event.

13. Version of Mr. Balnath Adhave is duly corroborated by complaint lodged by Mr. Kalyan Ghate (Exhibit – U-10). It is mentioned in the report of accidental death case that deceased Sumitrabai Adhave alongwith applicant no.1 – Balnath Adhave and others were taking out the electric motor from the well, but because of breaking pipe, Sumitrabai Adhave and her daughter suffered a fall in the well causing their death.

14. These circumstances came on record do show that deceased Sumitrabai Adhave was in fact working as a labourer in the field owned by respondent no.1 – Vidhyabai Walekar. Incident is reported to have happened at about 01.00 p.m. to 01.30 p.m. on that day. The timing of the incident also corroborates version of applicant Balnath that deceased

Sumitrabai Adhave was working as labourer in the field. Otherwise she would not have any occasion to go at the well at the mid-day.

15. As against this, evidence of respondent no.1 – Vidhyabai Walekar is to the effect that applicant no.1 – Balnath Adhave had been to her through respondent no.2 – Prabhakar Walekar – father-in-law. She deposed that in presence of sarpanch of Yesgaon, there was an agreement to lease out her field to applicant no.1 – Balnath Adhave. As such, she tried to make out the case that applicant no. 1 – Balnath Adhave is lessee of the field in question. Except bare version of this interested witness, there is no iota of evidence on record to show that applicant no.1 – Balnath Adhave was lessee of the agricultural field owned by respondent no. 1 – Vidhyabai Walekar.

16. In the wake of this evidence on record, it cannot be said that the learned Commissioner erred in recording the finding that deceased Sumitrabai Adhave was an employee of respondent no.1 – Vidhyabai Walekar and she died in accidental death and that the said accident arose out of and in the course of her employment with respondent no.1 – Vidhyabai Walekar. Resultantly it cannot be said that this Appeal is giving

rise to any substantial question of law as findings of the learned Commissioner in this regard is well supported by overwhelming evidence on record.

17. Now comes to the question of penalty of 50% of the quantum of compensation assessed by the learned Commissioner. Section 4-A of the Employees Compensation Act deals with payment of compensation. It mandates that the compensation is required to be paid within a period of one month from the date it becomes due. In the case in hand, the incident of death of Sumitrabai was of the year 2009 occurring in the course of employment of the deceased. Respondent no.1 – appellant tried to make out the case that the deceased was not her employee and in this manner statutory obligation was sought to be avoided. Hence, it cannot be said that the learned Commissioner erred in imposing penalty by incorrect interpretation of provisions of Section 4-A of the Employees Compensation Act, 1923. In the result, the Appeal is devoid of merit.

Appeal is therefore dismissed with no order as to costs.

(A.M. BADAR)
JUDGE

