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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1501 OF 2012

Vishnudas s/o Harinarayan Chandak
Age-65 years, Occ – Agriculturist
R/o Vivekanand Colony, Latur Road,
Murud, Paru nagar, Murud,
Taluka and District - Latur

APPELLANT

VERSUS

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| 1. Sunita w/o Arjun Gaikwad
Age-35 years, Occ – Household
R/o Ghute Nagar, Sainath Road, Murud
At & Post Murud, Taluka and District – Latur | RESPONDENTS |
| 2. Amarja d/o Arjun Gaikwad,
Age- 13 years, Minor U/g of respondent No.1 | |
| 3. Pravin s/o Arjun Gaikwad,
Age- 11 years, Minor U/g of Respondent No.1 | |
| 4. Karan s/o Arjun Gaikwad,
Age- 8 years, Minor, U/g of Respondent No.1 | |

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Mr. U. M. Indani, Advocate for the appellant
Mr. V. S. Undre, Advocate for respondents No.1 to 4

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[CORAM : M. T. JOSHI, J.]

DATE : 25th FEBRUARY, 2015

ORAL JUDGMENT:

1. Heard both the sides.
2. Present appeal is filed against the award passed by learned

Commissioner under the Workmen's Compensation Act, directing present appellant to pay compensation of Rs.2,35,590/- with interest @ 12 % p.a.

3. Brief facts of the case are as under:-

That the present respondents, being the dependents of deceased Arjun Gaikwad, have filed application under section 4 of the Workmen's Compensation Act. They claimed that deceased Arjun was working as Labour with the present appellant since 25th May, 2003 for wages @ Rs.100/- per day. On 3rd June, 2003, while he was carrying out work of digging of a well, under the instructions of present appellant, one stone escaped from crane and hit head of deceased Arjun. Eventually, he died in a hospital on 3rd June, 2003 itself. A complaint was lodged with the police station regarding accidental death. AD case was also registered. The present appellant has paid an amount of Rs.60,000/- towards part of the compensation and also promised to pay balance amount of the compensation shortly, however, he did not keep with his promise. Therefore, notice was issued to the appellant on 7th September, 2004. A reply with false statement was given and in the circumstances, the petition for seeking compensation came to be filed. An

amount of Rs. 2,40,000/- with interest @ 18% p.a. and penalty was claimed.

4. Present appellant was served with notice. He, however, failed to appear in the proceedings and ultimately the learned Commissioner was required to pass an order for proceeding the case *ex-parte*, on 26th July, 2007. Thereafter, the impugned award came to be passed on 7th July, 2009 i.e. after about two years after the order of matter to proceed *ex-parte* was passed.

5. Learned Commissioner took into consideration the investigation carried out by the police, payment made by the present appellant by cheque towards part of compensation and came to the conclusion that there was relationship of employer-employee between the deceased and the present appellant and the accident has occurred during the course of the employment. The deceased was 35 years old and accepting wages @ Rs.100/- per day, necessary factor was taken into consideration and compensation of Rs. 2,95,590/- was awarded with interest @ 12% p.a.

6. Aggrieved by the said award, present appeal is filed. During pendency of present proceedings, on the request of both the sides, the matter was referred to the mediator at Latur, vide

order dated 10th September, 2014. Ultimately, the mediator's report reached this Court on 29th January, 2015. It would show that none of the parties had appeared before the mediator and, therefore, mediation was not possible.

7. Learned counsel for the appellant submits that due to the mistake of the advocate, written statement could not be filed and the proceedings could not be contested. He submits that a substantial question of law regarding employer-employee relationship has arisen in the present case. He further submits that the appellant cannot be penalized for the negligence of the advocate. In the circumstances, reliance is placed on the ratio in **"Ramsingh and Others V. Union Territory, Chandigarh & Others"** reported in (2004) 1 SCC 126 and **"Lakshminarayana Shetty V. Shantha and Another"** reported in (2003) 9 SCC 190. Learned counsel for the appellant submits that the appeal may be allowed and the case may be remanded to the Commissioner.

8. On the other hand, learned counsel for the respondents opposes the plea. He submits that the deceased met with accidental death in the year 2003, present appellant remained absent since beginning and ultimately in the year 2007, learned

Commissioner directed to proceed the case *ex-parte* against him, however, the case could be concluded only on 7th July, 2009 and thereafter the present appeal came to be filed. He submits that the respondents being poor persons and dependents of the deceased labour, were unable to approach the District Court at Latur for mediation. The appellant also having full knowledge did not attend the mediation. In the circumstances, as no sufficient reasons are made out, and as no substantial question of law has arisen, the appeal be dismissed.

9. On the basis of this material, following point arises for my determination.

POINT

- I) Whether the case deserves to be remanded to the learned trial court?

10. My finding to the same is in negative. The appeal is therefore, dismissed for the reasons to follow:-

REASONS

11. History of the case, as given in detail above, would show that the respondents are litigating the claim for getting payment of compensation of deceased labour since 3rd June, 2003. May be

some time due to adjournments sought by the respondents or some time due to busy schedule of the Commissioner of the Workmen's Compensation, though the order regarding proceeding *ex-parte* against the present appellant was passed on 26th July, 2007 yet the application was decided after two years thereafter. During those two years, the present appellant did not take any step to get instructions regarding progress of the case. Not only this, but while in the present appeal, mediation was sought by the present appellant, however chose to remain absent before the mediator. Thus, valuable one year was lost in the same. Issue as to whether substantial question of law has arisen or not, would arise only when certain material is placed by both the sides before the Court. Here, present appellant avoided to place material and protracted the matter for one or the other reason, as detailed supra. In the circumstances, in my view, no case for remand is made out and hence the following order.

ORDER

- I) Appeal is dismissed with costs.
- II) In view of dismissal of the appeal, civil application No. 4145 of 2012 stands disposed of.

[M. T. JOSHI, J.]