

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 1105 OF 2003

Atul s/o. Kantilal Lotiya,
Age 40 years, Occu. Business,
R/o. Visava Nagar (Shivaji Nagar),
Nanded (alleged proprietor of
M/s. Atul Metal Industries)

**....Appellant.
(Ori. Respondent)**

Versus

Aleemkhan s/o. Mustafa Khan,
Age 24 years, Occu. Labour,
R/o. Nai Abadi, Nanded.

**....Respondent.
(Ori. Petitioner)**

Mr. R.R. Sancheti h/f. Mr. R.R. Mantri, Advocate for appellant.
Mr. S.S. Nirkhee, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 23rd November, 2015.

JUDGMENT :

1) The appeal is filed against the decision of the Commissioner appointed under the Workmen's Compensation Act (hereinafter referred to as 'the Act' for short) at Nanded in W.C.N.F.A. No. 5/2002. In the claim made for compensation in respect of injuries sustained by respondent - Aleem Khan, the compensation of Rs. 52,432/- is granted. Both the sides are heard.

2) It is the case of original claimant that he was working with respondent - Atul Lotiya from the year 2000 in his industry which is run by name Atul Metal Industries as labour. It is contended that he used to give polish to aluminum utensils on machine and he was getting weekly wages of Rs.400/- after completion of work of 175 to 200 k.g. It is contended that the employer was giving wages at the rate of Rs. 2.50 ps. per k.g. and in case, more work was done, he was being paid more amount.

3) It is the case of claimant that on 1.7.2001 when he was working in the campus of factory, he received injury to his left leg which is a fracture injury. It is contended that he was admitted in hospital of Dr. Lovekar by the employer. But he is not fully recovered and he is not in a position to do the aforesaid work. He has given his age as 28 years on the date of accident. He had made claim before the Labour Commissioner and then the matter was filed before Ex-Officio Commissioner appointed under the Act. He had claimed the compensation of Rs. 1,00,000/-.

4) The respondent/employer filed written statement in the matter on 11.9.2002. He contended that as per the

contentions made in the claim, Aleem Khan was doing work on contract basis and so, there was no employer-employee relationship between Aleem Khan and respondent. No other defence was taken.

5) On the basis of aforesaid pleadings, issues were framed. The claimant examined himself and he produced the record like claim made before the Labour Commissioner, notice given to employer and he examined Dr. Lovekar.

6) The fact of accident is not disputed and the defence is of aforesaid nature. Dr. Lovekar has given evidence that he is Master of Surgery (M.S.) and he gave treatment to the claimant. The record prepared by him is proved as Exh. 23 to 29. The address of the employer was given when he was admitted in hospital. The medical record shows that there was fracture of tibia 1/3rd left. The record like X-ray and prescription is produced and proved.

7) Respondent - Atul Lotiya examined himself and he has tried to say that he does not know the claimant and he is not the proprietor of Atul Metal Industries. He produced some record of registers, forms showing that long back on the record he had

retired. He has tried to say that he had replied the notice given by the claimant, but the said reply is not produced. In the cross examination, he has stated that Rajesh Kumar is his real brother and Bharti Ben is his sister and they are doing this business. Though there is some record produced like extract of registers, forms showing that he had retired in the year 1983, the incident took place on 1.7.2001 many years after the so called retirement. The name of industry is after the name of this respondent and in written statement, no such defence was taken. There is substantive evidence given by the claimant that Atul was running this business. In view of these circumstances, the defence taken by Atul that he is not employer is not acceptable. The aforesaid record is sufficient to prove that there was employer-employee relationship.

8) It appears that the Commissioner considered the aforesaid evidence given by the doctor, who had given treatment and due to nature of work which claimant was working, it is presumed that there is permanent disability of 40% and accordingly, the calculation of compensation is made. As no defence in that regard was taken and not much was argued in that regard, this Court holds that interference on the quantum of compensation is also not possible. Interest which is available as

per the statute is awarded by the Commissioner. No substantial question of law as such is involved.

9) In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/