

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL NO.1082 OF 2015
WITH
CIVIL APPLICATION NO.4750 OF 2015

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| <ol style="list-style-type: none"> 1. Vitthal Sahakari Sakhar
Karkhana Ltd., At Venunagar,
Post Gursale, Taluka Pandhapur,
District Solapur, through its
President 2. Vitthal Sahakari Sakhar
Karkhana Ltd., At Venunagar,
Post Gursale, Taluka Pandhapur,
District Solapur, through its
Managing Director | <p>.. Appellants</p> |
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Versus

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| <ol style="list-style-type: none"> 1. Bababai w/o Ajinath Misal,
Age 42 years, Occu. Household,
R/o Pangra, Post Nagtala,
Taluka Ashti, District Beed 2. Sahebrao Sarjerao Misal,
Age Major, Occu. Mukadam,
R/o Pangra, Post Nagtala,
Taluka Ashti, District Beed | <p>.. Respondent</p> |
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Mr A.V. Hon, Advocate for appellants
Mr S.B. Choudhari, Advocate for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 5th August 2015

PER COURT

1. This appeal is by employer under Section 30 of the Workmen's Compensation Act questioning the award delivered on 22nd January 2015 awarding compensation to the claimant to the tune of Rs.6,77,760/-. The accident in question had occurred on 31st December 2012 when the deceased Ajinath lost his life in the

premises of the appellant. So as to substantiate the challenge, learned Counsel for the appellants raised two fold contentions :

(a) In absence of employer-employee relationship whether the Commissioner for Workmens compensation was right in awarding the compensation;

(b) Whether there was appropriate appreciation of monthly wages of the deceased.

2. According to learned Counsel for the appellants admittedly, Ajinath died near weigh-bridge due to electric shock in the factory premises of the appellants, however, it has been brought on record during cross-examination of claimant No.1 that there was no contract between the appellant and the deceased.

3. The above referred piece of evidence is required to be analysed, particularly in the background of scheme and the object with which legislation i.e. Workmens Compensation Act, 1923 was brought in the Statute with an intention to provide protection and stability to the workmen. Admittedly in the present case, the claimants are uneducated and were unable to understand the repercussion of the statement made in cross-examination as regards denying the contract of employment. The said evidence of the claimant is required to be appreciated in the background of the object of the Statute and just because there is no contract of employment brought on record, the fact that the death of the employee in the factory premises of the appellants, the report to that effect in the Police Station by the

Agricultural Officer of the appellants is required to be appreciated. It is noted herein that occurrence of the accident in the premises of appellants during the crushing season is not in dispute. It is a regular practice that the appellants hire the employee for carting through sub-contract and status of the present claimant is in view thereof. Having regard to the evidence brought on record and the conduct of the appellants, the inference that there exists employer-employee relationship between the appellants and deceased, in my opinion is correct finding.

4. So far as the second contention of the appellants as regards the aid and income of the deceased is concerned, it is required to be noted that the Commissioner, upon appreciation of the evidence of the claimant No.1 Bababai has considered the age of the deceased as 45 years. Nothing contrary to that was brought on record by the present employer-appellants that age of the deceased was more than 45 years. Apart from above, the income of deceased at the rate of Rs.8,000/- p.m. though was specifically pleaded, it was duty of the appellants to bring on record evidence as regards the monthly income of the deceased. The Commissioner, in the background of above has proceeded to appreciate the nature of employment in the background of the evidence of witness of the claimant. The Commissioner then has proceeded to refer the notification of the Central Government issued on 31st May 2010 fixing the monthly wages of the employee like that of deceased at the rate of Rs.8000/- p.m.

5. In my opinion, the Commissioner for Workmens Compensation has properly appreciated the evidence that was brought on record.

6. As such, no case for interference is made out. The appeal fails, stands dismissed.

7. In view of dismissal of appeal, Civil Application does not survive and as such, stands disposed of.

(N.W. SAMBRE, J.)

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