

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

FIRST APPEAL NO. 1522 OF 2013

Sujata w/o Ashok Pokharkar

... Appellant

VERSUS

Varsha w/o Santosh Birajdar & Ors.

... Respondents

.....
Mr R. S. Deshmukh, Advocate for the appellant
Mr S. B. Gastgar, Advocate for respondents No. 1 to 3
.....

CORAM : **S. V. GANGAPURWALA, J.**
DATE : **16TH SEPTEMBER, 2015.**

PER COURT:

. Mr Deshmukh, learned Counsel for the appellant submits that, the Commissioner of Workmen's Compensation has allowed the application for compensation filed by the respondent-claimants without properly appreciating the evidence that the deceased was not the employee of the present appellant. The learned Counsel submits that, the present appellant had specifically denied that he is the employer of the deceased. It was the specific case of the appellant that, the deceased had taken the truck without the permission of the appellant however, the Commissioner of Workmen's Compensation in a cursory manner, without appreciating the evidence on record, has held that the deceased was the employee of the appellant. The said

finding is perverse and without evidence. In the oral evidence, the claimants could not tell the name of the employer and the destination, at which the truck was being taken by the deceased. In absence of any proof, the Tribunal could not have come to the conclusion that the deceased was the employee of the appellant. The Id. Counsel submits that the deceased himself was responsible for the accident. Even the investigation by the police revealed the same. This aspect also has not been considered.

2. I have heard the learned Counsel for the respondents.

3. This being an appeal under the provisions of the Workmen's Compensation Act, same can be entertained only on substantial question of law.

4. Though the appellant did not admit the relationship, it is not disputed that the truck driven by the deceased was owned by the present appellant. The present appellant did not step into the witness box to substantiate the case. Adverse inference needs to be drawn against the appellant for not adducing any evidence. The appellant had also not lodged any complaint if the deceased had taken the truck without permission and was not the employee of the appellant as

contended by the appellant. The Commissioner has evaluated the evidence on record and has arrived at a plausible conclusion. The said conclusion is based on the evidence and the conduct of the parties.

5. In light of the above, no substantial question of law arises. First Appeal is dismissed. No costs.

6. Learned Counsel for the appellant, at this stage, prays for extension of the stay granted.

7. As I have already held that no substantial question of law arises, the request for stay is rejected.

[S. V. GANGAPURWALA, J.]

sgp