

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

FIRST APPEAL NO.1668/2013

M/s. C. B. Ginning & Pressing Industries,
Through : Its Partner, Shri. Kantilal Chandanmal Jain,
Age : 48 Years, Occu. : Business,
R/o : Chandanwadi, Karanja, Taluka : Karanja,
District : Washim

..Appellant
[Orig.R.No.1.]

Versus

1. Maroti S/o Bhagoji Jogadand,
Age : 48 Years, Occu. : Labour,
R/o. : Bolda, Taluka : Kalamnuri,
Dist. : Hingoli
2. Sau. Janabai W/o Maroti Jogdand,
Age : 43 Years, Occu. : Nil,
R/o : Bolda,
Taluka : Kalamnuri
3. Ramrao Gangaram Jogdand,
Age : Major, Occu. : Business,
R/o : Bolda, Taluka : Kalamnuri,
Dist. : Hingoli

R/3 is dismissed as per order dt.27/9/13.

4. United India Insurance Co. Ltd.,
Through its Branch Manager,
Dayawan Complex, Station Road,
Parbhani

.. Respondents

Mr.Vidwauns S.S. Advocate for appellant

Mr.S.S.Deshmukh,Adv. For respondent nos.1 and 2.

Mr.V.R.Mundada, Adv. For respondent no.4

...

CORAM : S.V.GANGAPURWALA,J.

DATE : 12TH OCTOBER,2015

PER COURT :

1] The present respondents had filed application for compensation under the provisions of the Employees Compensation Act, on account of the death of Gajanan. The said claim petition is allowed. Aggrieved thereby the Original Respondent No. 1, has filed present appeal.

2] The learned counsel for the appellant submits that, the deceased was aged 14 years. School leaving certificate was filed to arrive at the age of the deceased. The child of 14 years could not have been employed. There is no relationship of employer employee between present appellant and deceased Gajanan. The learned counsel submits that, the present appellant at no material point of time had ever employed the deceased Gajanan. According to the learned counsel, the Court while awarding compensation has considered age as 16 years, which is illegal. There is absolutely no evidence led by the claimant to prove the factum of employment of deceased Gajanan with the present appellant. The present appellant had employed the original respondent No. 2 as contractor. The respondent No. 2 had also

not employed the deceased Gajanan. The learned counsel submits that, even penalty could not have been imposed as no show cause notice was issued with regard to the penalty. Mr. Deshmukh, the learned counsel for the respondents / claimants supports the order.

3] I have also heard Mr. Mundada, learned counsel for the insurance company. This being an appeal under the provisions of Employees Compensation Act, can only be considered on substantial question of law. As far as the relationship of the present appellant as a employer with the deceased Gajanan is concerned it is a fact that, the present appellant had not directly employed the deceased Gajanan. He appears to have been employed by the respondent No. 2 / Contractor, engaged by the present appellant to provide the labours. Even if it is assumed that, deceased Gajanan was employed by respondent No. 2 / Contractor then still as per Section 12 of the Employees Compensation Act, the present appellant would be liable as a principal / employer.

4] The respondent No. 2 in his written statement has not specifically denied about engaging deceased Gajanan nor respondent No. 2 has stepped into the witness box to deny the same. It is also a matter of record that, the deceased died in the factory premises of the appellant in the fire that had taken place in the appellants premises. The Commissioner had considered the F. I. R., so also, the complaint, spot panchanama, inquest

punchanama and the postmortem report. The Court on appreciation of evidence has considered that, the deceased was employed by the respondent No. 2 i.e. the Contractor engaged by the present appellant. The said finding is a finding of fact arrived at by appreciating the evidence on record in a plausible manner. The fact that the deceased was being paid Rs. 150/- per day is not disputed by the respondent No. 2 in his written statement. The age of 16 years is considered. Of course the minor could not have been engaged, however, the respondents have engaged the minor as such, the Commissioner has rightly saddled the compensation amount. The Commissioner has framed the issue about penalty also. The appellant was well aware about the claim of the penalty to be defended.

5] Considering the above, no substantial question of law arises. As such, the first appeal is dismissed. No costs. Claimants are entitled to withdraw the amount deposited. Civil application also disposed of.

[S.V.GANGAPURWALA,J.]

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