

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

FIRST APPEAL NO. 1761 OF 2013

Smt. Archana w/o. Nitin Kadam & Ors. .. Appellants

Versus

Kisan w/o. Hausiram Ekhande & Ors. .. Respondents

Mr. R.D. Bhalerao, Advocate for the appellants.

Mr. P.V. Barde, Advocate for the respondents.

CORAM : A.M. BADAR, J.

DATED : 17.11.2015

P.C. :-

1. By this appeal under section 30 of the Employee's Compensation Act, 1923, the appellant/original applicants are challenging judgment and order dated 22.04.2013, passed by learned Commissioner under Workmen's Compensation Act/Labour Judge, Jalna in Application (WC) No. 40 of 2006, thereby rejecting their claim for compensation on account of death of Nitin Kadam, occurring on 19.04.2005.

2. Brief facts required for adjudication of this appeal can be summarized thus :-

. The applicants/appellants have filed an application under section 10 of the Employee's Compensation Act, 1923 claiming compensation of Rs.4.08 lakhs with interest of penalty from the respondents, with a contention that deceased Nitin Kadam was employee of respondents and more particularly respondent No.3-Suresh Ekhande. According to the applicants, Nitin Kadam was hired by the respondents for doing work of concreting of well on daily wages of Rs.150/-. When he was doing work under instructions of the respondents, upper portion of the well fell, causing accidental death of Nitin.

3. The respondents opposed the claim by filing written statement and thereby denying employer/employee relationship between them and deceased Nitin. According to the respondents, deceased Nitin was a contractor, but had taken work of concreting well at the rate of Rs.500/- per running foot and as such it cannot be said that he is employee of the respondents and had succumbed to death in an accident arising out of and in the course of employment with the respondents.

4. In order to prove their claim, applicant/appellant examined applicant No.1-Archana. Respondents examined

respondent No.3-Suresh as well as one Raosaheb. Reliance was placed on police papers as accidental death of Nitin has resulted in registration of crime. After due trial, learned Commissioner under Workmen Compensation Act came to the conclusion that the applicants failed to prove that deceased Nitin was an employee of the respondents and died because of accident arising out of and in the course of employment. Consequently, application for compensation came to be rejected.

5. Heard Mr. Bhalerao, learned Counsel appearing for the appellants. He drew attention of this Court to cross-examination of Suresh Ekhande and submitted that respondent -Suresh has candidly admitted that deceased Nitin was working as a labourer on the work of well and as such learned Tribunal has erred in coming to the conclusion that the applicants have failed to establish employer-employee relationship. In his submission, evidence of applicant Archana is sufficient to show that deceased was working as a labourer on the well work of the respondents.

6. As against this, Mr. Barde learned Counsel

appearing for the respondents drew my attention to police papers as well as evidence of Suresh and Raosaheb and submitted that the appeal is not raising any substantial question of law and findings of the learned Commissioner is in consonance with the evidence on record.

7. The appeal under section 30 of the Employee's Compensation Act lies only on raising substantial question of law. The finding of fact by overlooking relevant provisions or by relying on inadmissible evidence can give rise to substantial question of law. However, pure finding of fact based on evidence on record cannot give rise to any substantial question of law and cannot be subject matter of appeal.

8. In the case in hand, the respondents have come up with categorical defence that deceased Nitin was a contractor and he had taken contract of concreting the well at the rate of Rs.500/- per foot. To substantiate this defence, respondent-Suresh Ekhande entered into witness box and deposed that deceased Nitin had taken contract of concreting well at the rate of Rs.500/- per foot. His stray statement

in cross-examination that on 19.05.2004 deceased Nitin was working as a labourer on the well cannot be construed to mean that there existed employer-employee relationship between deceased Nitin and the respondents. Ultimately, deceased Nitin was actually working inside the well and had suffered accidental death because of fall of upper portion of the well. In that context, this statement in the cross-examination has to be read.

9. The finding of learned Commissioner that deceased Nitin was not in employment of the respondents is also based on evidence of Raosaheb, who was an employee of the deceased. Evidence of Raosaheb also shows that Nitin had taken contract of concreting of well and had employed him for that work.

10. Apart from this clear and cogent evidence on record, contemporaneous documents in the form of FIR as well as police statements goes to show that deceased Nitin had taken contract of concreting. Even statements of father and brother of deceased Nitin recorded by police under section 161 of Cr.P.C. during the course of

investigation goes to show that deceased Nitin had taken contract of concreting the well from the respondents. In the light of this evidence on record, it cannot be said that the findings arrived at by the learned Commissioner that deceased Nitin was not employee is perverse. Consequently, no substantial question of law is raised in the instant appeal. Therefore, the appeal is dismissed with no order as to costs.

[A.M. BADAR, J.]