

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

907 FIRST APPEAL NO. 2216 OF 2015
WITH CIVIL APPLICATION NO.9100/2015 IN FIRST APPEAL
NO.2216/2015

YASH INDUSTRIES, JALGAON
VERSUS
GOVIND BHARAT YADAV

...

Advocate for Appellant : Mr. Wani Girish V.
Advocate for Respondent : Mr. Patil Vijay Y.

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 27th October, 2015

PER COURT :

1. Mr. Wani, the learned counsel for the appellant submits that respondent had filed an application for compensation under the provisions of Employees Compensation Act. The same is partly allowed. The appellant assailed the said order in the present appeal.

2. Mr. Wani, the learned counsel for the appellant submits that the Commissioner for Workmen's Compensation has come to the conclusion that there is no evidence on record to prove that the claimant is an employee of the present appellant. Still, as only on humanitarian ground, hospital expenses has been incurred by the present appellant, the Commissioner for Workmen's Compensation has held the appellant as employer of the the claimant.

The same is erroneous. There is absolutely no evidence on record even to remotely suggest that the claimant is employee of the present appellant. The claimant had been to the premises of the appellant in search of job. Considering the age of the claimant as 17 years, the appellant refused to employ him. He unauthorizedly operated the machine, because of which the accident occurred. Learned counsel submits that the order of the commissioner is illegal.

3. Counsel for the respondent/claimant supports the judgment.

4. This being an appeal under the provisions of the Employees Compensation Act, can only be considered on substantial question of law. It is not disputed that the accident in question has taken place in the premises of the present appellant. The said accident has taken place when the claimant was operating the machine in the factory of the present appellant. It is also not disputed that it is the appellant's personnel who had taken the claimant to the hospital and incurred medical expenses. The present appellant, being an owner of the factory, has to maintain register of workers. No such register has been produced on record by the appellant to

show list of workers working with him and that name of the claimant was not included in it. Adverse inferences are required to drawn in that regard.

5. Considering the aforesaid aspects of the matter, the commissioner has arrived at a plausible conclusion and has considered the case of the claimant of he being an employee of the appellant is proved on preponderance. The commissioner has considered only 30% disability. No penalty has also been awarded. The commissioner, on appreciating evidence, has taken a plausible view. No substantial question of law arises. As such, the first appeal is dismissed. No costs.

6. In view of dismissal of the appeal, claimant is entitled to withdraw the amount deposited by the appellant. Civil application also stand disposed of.

(S. V. GANGAPURWALA, J.)

JPC