

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...
9 FIRST APPEAL NO. 1010 OF 2012

VILAS TRIMBAK GUNJAL AND ANR
VERSUS
NISAR BASHIRBHAI SHAIKH AND ORS

...
Advocate for Appellants : Mr. Mr. G. B.Rajale h/for
Temkar Rajendra K.

Advocate for Respondent No.1 : Mr. Parag V Barde
Advocate for Respondent. 2 :Mr.Vinayan N. Upadhye
Advocate for Respondent No.3: Mr. V. R. Mundada

WITH
FIRST APPEAL NO.1556 OF 2012

NISAR BASHIRBHAI SHAIKH AND ORS
VERSUS
BHASKAR BHAUSAHEB THORAT AND OTHERS

Advocate for Appellant : Mr. Parag V Barde
Advocate for Respondents 1 to 4 : Mr. A. G. Kanade

...
CORAM : S. V. GANGAPURWALA, J.

DATE : 9th September, 2015

PER COURT :

1. First Appeal No.1110/2012 is filed by the original opponents 1 and 2 i.e. the employer of the claimant and owner of land, whereas First Appeal No.1556/2012 is filed by the claimant to the extent of non grant of interest and penalty.

2. Mr. Rajale, the learned counsel for the appellants i.e. the employer and the owner of the field submits that the accident has not occurred

during the course of and out of employment. On the given date, there was load shedding. So, the work was stopped at 12 noon. The alleged incident had taken place at 4 o'clock. Once the work was stopped, the claimant do not have authority from the employer to enter the crane. As the claimant sustained injuries while the crane was being operated, the opponents 1 and 2 cannot be held liable to pay any compensation amount.

3. The learned counsel further submits that the claimant was under the influence of liquor and was working under the same, the claimant himself contributed to the accident because of his negligence act. In view of that also, the original opponents 1 and 2 would not be liable to pay any compensation amount.

4. Learned counsel further submits evidence in this regard has not been properly appreciated. Even the applicant claimant has stated that there was load shedding at the relevant time. This admission would be sufficient to negate the case of the claimant. However, the said aspect has not been considered by the Commissioner while allowing the application for

compensation. Learned counsel further submits that the appeal filed by the claimant to the extent of interest of penalty is not maintainable.

5. Mr. Barde, the learned counsel for the claimant submits that the claimant was engaged as labour by the original opponent no.2 and also used to drive the Tractor. The evidence has been scanned properly. There is no evidence to show that the claimant was under intoxication. The learned counsel fairly concedes with regard to the proposition that the appeal filed by the claimant to the extent of interest and penalty is not maintainable in view of the judgment of this Court.

6. I have considered the submissions.

7. The appeal under the Workmen's Compensation Act can only be entertained on substantial question of law. The commissioner has appreciated the evidence on record and has come to a plausible conclusion. It has been observed that there is no evidence to show that the claimant was under intoxication on the given date, so also there was no positive evidence on record to show that at the relevant time, the work was stopped. No

corroborative piece of evidence has been brought by original opponents 1 and 2. Relationship of employer and employee between original Opponent No.2 and the claimant has been established. Even it has been established by preponderance that opponent No.2 has taken work of digging well in the field of the opponent No.1. Considering the fact that the evidence has been scanned in a plausible manner, there is no perversity in appreciation of evidence by the commissioner. No substantial question of law is involved. Even it is not debated that First Appeal No. 1556/2012 is not maintainable.

8. In the light of above, both the appeals are dismissed. No order as to costs.

(S. V. GANGAPURWALA, J.)

JPC