

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2238 OF 2015

Amir Shaikh Sharif, Age 21 years,
Occupation Sugarcane Cutting Labourer,
Resident of Nalwandi, Taluka Paroda, District
Beed

APPELLANT

V E R S U S

- 1] Managing Director, Bhima Sahakari Sakhar
Karkhana Limited [Takli], Taluka Mahol,
District Solapur
- 2] Mahadev s/o Chana Dhole, Age Major,
Occupation Mukadam, Resident of Nalwandi,
Taluka Patoda, District Beed

RESPONDENTS

Mr. Rahul P. Dhase, Advocate for the Appellant

Mr. J.M. Murkute, Advocate for Respondent No.1

CORAM : A.M. BADAR, J.

DATE : 26th NOVEMBER, 2015

ORAL JUDGMENT :

1. This is an Appeal under Section 30 of the Employee's
Compensation Act, 1923 challenging the judgment and order dated 18th

June, 2015, by original applicant in Workmen's Compensation Petition No. 13 of 2011 whereby his claim for compensation for injuries suffered in the accident dated 17th May, 2010 was dismissed by the learned Commissioner under the Employees' Compensation Act, 1923.

2. *Brief facts leading to the institution of the present proceedings can be summarized thus :-*

Applicant / present Appellant Amir contended that he was in the employment of Respondent No.1 – Sugar Factory as Labourer, in the crushing season of the year 2009 – 2010. He had lodged a petition under the Employee's Compensation Act, 1923, bearing Workmens' Compensation Petition No. 13 of 2011. It was contended therein that on 17th May, 2010, when applicant Amir harvested sugarcane and was transporting the same to the Sugar Factory by bullock-cart, the accident in question is happened. Wheels of the bullock-cart passed through the ditch causing jerk and the accident happened. According to Applicant - Amir, he fell down and suffered injuries to his head and spine. Through the jeep of Respondent no.1 – Factory he was taken to the hospital where he took treatment as indoor patient up-to 11th June, 2010 and thereafter he

was advised bed rest till 2nd December, 2010. Applicant - Amir claimed compensation of Rs.5,00,000/- from Respondents by contending that he suffered personal injuries in an accident arising out of and in the course of his employment with Respondent No.1 – Sugar Factory. According to Applicant – Amir, he was employed through Respondent no.2 – Mahadev, and therefore, both Respondents are jointly as well as severally liable to pay compensation to him.

3. Respondent no.1 – Sugar Factory opposed the claim by contending that Applicant – Amir was a minor at the relevant time, and therefore, he could not have been engaged as labourer. Respondent no.1 – Sugar Factory denied that Applicant - Amir was its employee at any point of time. According to Respondent no.1 – Sugar Factory, it engages labourers through *Karmyogi Sewa Sahkari Sangh* and all such labourers employed by the factory are insured. In fact, as Petitioner is a minor, claim petition came to be filed by his grand-father Shaikh Kalindar. Said Shaikh Kalindar was a labourer with Respondent no.1 – Sugar Factory in the crushing season of 2009-2010. Even Shaikh Kalindar was insured by Respondent no.1 – Sugar Factory. Respondent no.2 – Mahadeo by filing Written Statement contended that he was acting as *Mukadam* with

Respondent no.1 – Sugar Factory and as Applicant – Amir was minor, he was employee in the name of his grand-father Shaikh Kalindar as a labourer.

4. On the basis of rival pleadings, issues were framed. Applicant - Amir examined his grand-father Shaikh Kalindar and also examined Dr. Dattaprasanna. Respondent no.1 – Sugar Factory examined it's Clerk Dnyandev, whereas Respondent no.2 – Mahadev examined himself. Reliance was also placed on documentary evidence by the parties.

5. After due trial, learned Commissioner under Employees Compensation Act came to the conclusion that Applicant – Amir failed to prove that he was employee of Respondent no.1 – Sugar Factory as labourer for cutting sugarcane. By holding that Applicant – Amir failed to prove that he was an employee of Respondent no.1 – Sugar Factory, the petition claiming compensation was rejected by the impugned judgment and order dated 18th June, 2015.

6. This is an appeal filed under Section 30 of the Employees'

Compensation Act, 1923. As such, it can be entertained only on pointing of substantial question of law. If findings of facts are in consonance with evidence on record, then it cannot be said that they give rise to a substantial question of law. However, finding of fact are arrived at by overlooking the relevant material or evidence on record it can certainly give rise to substantial question of law. In view of this position of law one will have to examine the evidence on record in order to ascertain whether Applicant – Amir was an employee of Respondent no.1 – Sugar Factory.

7. On the point of employment of Applicant – Amir, evidence is coming through the mouth of his grand-father Shaikh Kalindar as well as Respondent no.2 – Mahadeo. As against this, Dnyandeo – Clerk working with Respondent no.1 – Sugar Factory is vouching that Applicant – Amir was not an employee of the Sugar Factory at the time of accident in question.

8. Section 3 of the Employees Compensation Act, 1923 deals with liability of an employer to pay compensation to its employee for an incident arising out of and in the course of his employment with the employer. The term employee is defined under Section 2 (1) (dd) of the

said Act. Section 2 (1) (dd) reads as under :-

“employee” means a person, who is -

(I) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them.”

Schedule 2 of the said Act gives list of persons subject to the provisions of Section 2 (1) (dd) of the Employees Compensation Act, 1923 which are included in the definition of the term employee. It is not in dispute that an employee working with the Sugar Factory for harvesting and transporting the sugarcane falls under the definition of term 'employee' in the said Act.

9. Though witness Shaikh Kalindar, grand-father of the Applicant – Amir and Respondent no.2 – Mahadeo have come up with an oral evidence that Applicant – Amir was engaged as labourer for harvesting sugarcane for the crushing season 2009 – 2010, this evidence is not supported by any document on record. The documentary evidence placed on record by the parties do show that there is record of employees working with Respondent no.1 – Sugar Factory. These documents are at list Exhibit 24 / 1. Documents placed on record with Exhibit 24 were considered by the learned Commissioner under the Employees Compensation Act, 1923 in order to adjudicate this aspect. The document at Exhibit 24 / 1 is the payment slip of Sahikh Kalindar, who is grand-father of Appellant – Amir. He is shown as owner of the bullock-cart. That payment slip also mentioned name of Respondent no. 2 – Mahadev as *Mukadam*. Then there are bills for March, 2010 produced by Shaikh

Kalindar – grand-father of the Appellant. The bills produced by this witness shows him as labourer. Respondent no.2 – Mahadev is shown as *Mukadam*. Such documentary evidence is produced by none else than the Appellant himself. If employment of a particular labourer is reflected from the bills and receipts which are in possession of such labourer then nothing prevented Applicant – Amir to place on record such document establishing his employment with Respondent no.1 – Sugar Factory. However, such evidence is not forthcoming. On the contrary, there is evidence of Dnyandev on record to show that Applicant – Amir was never employed by Respondent no.1 – Sugar Factory. In the wake of this evidence on record, it is not possible to conclude that the learned Commissioner under the Employees Compensation Act, 1923 recorded a perverse finding that Applicant – Amir failed to prove the fact that he was an employee of Respondent no.1 – Sugar Factory. Such finding cannot be termed as a perverse finding raising a substantial question of law.

In the result, the appeal is devoid of merit. Appeal stands dismissed. No order as to costs.

(A.M. BADAR)
JUDGE

