

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

FIRST APPEAL NO. 1427 OF 2015

Maharashtra State Electricity Distribution
Company Ltd. Through Assistant
Engineer and another .. Appellants

Versus

Shakir Shafik Pathan Banekhan Pathan .. Respondents

Shri Prakash B. Paithankar, Advocate for Appellants.

Shri N. K. Choudhari, Advocate for the Respondent.

WITH

FIRST APPEAL NO. 1428 OF 2015

Shakir Shafik Pathan Banekhan Pathan.. Appellant

Versus

Maharashtra State Electricity Distribution
Company Ltd. and another .. Respondents

Shri N. K. Choudhari, Advocate for the Appellant.

Shri Prakash B. Paithankar, Advocate for Respondents.

CORAM : S. V. GANGAPURWALA, J.

DATE : 25TH AUGUST, 2015.

PER COURT :

. The appellant in First Appeal No. 1428 of 2015 has filed a petition for compensation under the provisions of the Workmen's Compensation Act claiming compensation on account of injury sustained by the appellant therein on account of accident which had taken place during the course and out of employment. The

First Appeal No. 1427 of 2015 is filed by the respondents in the said claim petition.

2. Mr. Paithankar, the learned counsel for the appellants/company in First Appeal No. 1427 of 2015 submits that, the relationship of employer and employee between claimant and the company is not established. No evidence muchless cogent evidence has been led by the claimant to prove that the claimant was the employee of the company. The evidence on record has been perversely appreciated by the Commissioner Workmen's Compensation. According to the learned counsel, it was for the claimant to prove that he was an employee. No documentary evidence has been placed on record.

3. Mr. Choudhari, the learned counsel for the claimant submits that, the Commissioner has discussed the evidence in this regard. It is on the instructions of the superior, the claimant was doing the work. The claimant was given permit to work on the said D.P. According to the learned counsel the said evidence is rightly discussed.

4. The learned counsel for the claimant further submits that, vide notification dated 31.05.2010 amendment has been introduced to Sec. 4 (1B) of the Employees Compensation Act wherein maximum income can be considered as Rs. 8,000/- per month. The evidence is led by the claimant in that regard. The

Commissioner has not relied on the income proof produced by the claimant. As such Rs. 8,000/- income ought to have been considered, but the Commissioner has considered the income to the extent of Rs. 4,000/- per month only. It is not in consonance with the provisions of the statute.

5. With the assistance of learned counsel I have gone through the judgment. The appeal filed by the employer can only be considered on substantial question of law. The employer has filed the appeal on the ground that relationship of employer and employee between the claimant and company is disputed. The evidence oral as well as documentary is led by the parties. Upon appreciation of the evidence the Commissioner has come to the conclusion that the claimant is an employee of the company and was working with the company on the relevant date, also as per the orders of the superior. The claimant was given the permit to work on the D.P. The complaint was received from the villagers and the superior Mr. Bhavale had issued the permit to the claimant to work on the said D.P. as such company cannot disown the relationship with the claimant.

6. As far as quantum of compensation is concerned, the notification dated 31.05.2010 has increased the maximum income to Rs. 8,000/- per month. However, the same maximum ceiling on the income which can be considered for grant of compensation. The claimant has come

with the case that the claimant was earning Rs. 250/- per day which would come to Rs. 6,500/- per month after deducting four holidays. The amount towards the medical expenses is rightly considered, which requires no interference.

7. In the light of the above, it was erroneous on the part of the Commissioner Workmen's Compensation to rely on the deleted provisions. The accident had taken place after the issuance of notification increasing ceiling on the income to Rs. 8,000/- per month.

8. In view of that, I pass following order. The First Appeal No. 1427 of 2015 filed by the company is dismissed. In First Appeal No. 1428 of 2015 the award is modified to the extent that the claimant is held entitled for enhanced total amount of Rs. 87,360/-. The claimant has already received Rs. 53,760/-. As such, the respondents shall also pay the enhanced compensation of Rs. 33,600/- with interest at the rate of 9% per annum from 16.05.2011 till its realization. The claimant shall also be entitled for total amount of Rs. 43,680 as penalty. The amount already paid shall be deducted. The rest of the order of the Commissioner Workmen's Compensation is upheld and maintained. No costs.

[S. V. GANGAPURWALA, J.]