

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

FIRST APPEAL ST.NO.29629 OF 2013

The Manager,
Vikrant Malliable Company Ltd.,
Waluj-Pandharpur road,
Aurangabad

..Appellant

Versus

1. Bhimrao Nana Dhule
Age 44 years, Occu. Labour
R/o Old Garkheda,
Aurangabad

..Respondent

[2] Lalchand Kisan Choudhari,
Age 44 years, Occu. Contractor,
R/o Golwadi, Taluka and
Dist. Aurangabad

| Appeal dismissed
| as per Court's
| order dt.31.1.2014

Mr P.G. Rodge, Advocate for appellant
Mr G.K. Muneshwar, Advocate for respondent No.1
Appeal dismissed as against respondent No.2 as per Court's order
dated 31.1.2014

CORAM : N.W. SAMBRE, J.

DATE : 5th August 2015

PER COURT

Heard Mr Rodge, learned Counsel for the appellant.

2. The present appeal is by principal employer who had engaged the original respondent No.1, through Respondent No.2 for painting contract. When Respondent No.1 was hired for executing the work of painting, he suffered an accident as a result of which claim for compensation came to be moved.

3. Mr Rodge would urge that there are two questions of law which can be taken into account :

(a) In absence of employer – employee relationship whether the Commissioner for Workmens Compensation was right in awarding compensation ?

(b) Whether there was enough evidence on record to demonstrate the degree of disability and loss of earning capacity ?

4. With the assistance of learned Counsel, I have perused the record and proceedings and the observations made by the learned Commissioner for Workmens Compensation and Judge, Labour Court, Aurangabad.

5. So as to establish the claim, the claimant has examined two witnesses. One the contractor who had employed him namely Devidas and one Latabai. The contractor in clear terms has deposed that the accident in question was brought to the notice of principal employer/appellant. Though in examination-in-chief he has stated that the work in question was not awarded to him, however, in cross he has admitted entire claim of the claimant. Based on the same, the Commissioner proceed to award the compensation.

6. The perusal of evidence as discussed in award reflects that the employer-employee relationship was very much established by the claimant by examining the witnesses. In absence of any documentary evidence, the Commissioner was right in appreciating the oral evidence that there exists employer-employee relationship in between the appellant and the claimant.

7. Apart from above, the claimant has examined Dr.Arun Bang at Exh.U-16 so as to establish the nature of injuries, the degree of disability, the loss of earning capacity. Dr. Bang was subjected to cross-examination, however, nothing could be elicited from his cross-examination. As such, the Commissioner for Workmens' Compensation, based on expert's evidence has noted that there is 35% permanent partial disability to the claimant and accordingly assessed the loss of earning capacity.

8. The award of compensation, in my opinion is based on sufficient evidence on record. As such, no substantial question of law can be noticed.

9. There is one more reason to dismiss the appeal that the appellant herein, before filing the appeal ought to have deposited the entire amount of compensation as per provisions of Section 30 of the Act, however, the appellant has deposited just 50% of the amount of compensation.

10. In view thereof the appeal stands dismissed.

11. In view of dismissal of appeal, the claimant is at liberty to apply for withdrawal of amount.

(N.W. SAMBRE, J.)

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