

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

FIRST APPEAL NO. 2732 OF 2015
WITH CA/13803/2015 IN FA/2732/2015

1] BHANUDAS BHAGWANRAO JOSHI
2] ARUN S/O BHANUDAS JOSHI
3] UDAY S/O BHANUDAS JOSHI
4] RAVI S/O BHANUDAS JOSHI
5] KIRAN S/O BHANUDAS JOSHI
VERSUS
RAMESH VISHWANATH ALURE

...
Advocate for Appellants : Shahane Pradeep L.
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CORAM : S.V.GANGAPURWALA,J.

DATED : 20TH OCTOBER, 2015

PER COURT :-

The present respondent had filed application for compensation under provisions of Employees Compensation Act. The said application is partly allowed. Aggrieved thereby, the original opponents 1 to 5 have filed present appeal.

2] Mr.Shahane, learned counsel for the appellants strenuously contends that the claimant was not employee of the present appellants. The present appellants had specifically denied that the claimant is their employee. No relationship of employer and employee existed between the parties. There is no agreement placed on record with regard to the said fact. The learned counsel submits that in absence of any evidence, the Commissioner could not have arrived at a conclusion that the claimant was appointed as Saldar of the present appellants. According to the learned counsel,

the Commissioner only on surmises and conjecture has arrived at a finding that the claimant is an employee of the present appellants. Appellants have proved their case that the claimant illegally brought his fodder and started using the machine of the present appellants. The amount has been paid by present appellants to the claimant on humanitarian ground. Even agreement is executed by the claimant that he is not employee of the appellants. The said aspect has not been considered by Commissioner in its correct perspective. According to the learned counsel, the Court has failed to scan the evidence properly. The claimant has not sustained any injury during the course of employment of the present appellants. The claimant at no material point of time was employed by the present appellants. According to the learned counsel, the Court has also failed to consider the medical evidence. Doctor has admitted that the claimant can do all his work as such no question of disability. Learned counsel submits that even second notice was never issued while imposing penalty upon the present appellants.

3] I have gone through the judgment. This being an appeal under the provisions of the Employees Compensation Act, can only be entertained on substantial question of law.

4] The present appellants have come with the case of total denial. The fact that the incident occurred in the premises of the present appellants is accepted even by the appellants. It is also accepted by the appellants that the mishap occurred on the machine owned by the appellants. The appellants have come with a case that the claimant was illegally using that machine to cut his own fodder. The appellants at no material point of time had lodged any case of trespass or otherwise against the claimant. It has been observed by the Commissioner that the Munim of the appellants had taken the

claimant to the hospital. Even medical expenses have been paid by the appellants. Not only that the facts on record would show as to how poverty and illiteracy is being sought to be exploited. It is alleged by the appellants that an agreement is executed by the claimant that he is not an employee of the present appellants while paying the amount of medical expenses. The Commissioner has considered all these aspects. It has held that even that agreement is not proved. The claimant has examined the witnesses, the Court has considered the evidence on record led by the claimant as well as the opponents.

5] The Court has scanned the evidence properly and has arrived at plausible conclusion. The claimant has proved relationship by preponderance of probabilities. It has also been observed that the appellants have admitted that they have Saldars and Mahindars employed, however, have not produced the list or the register of the said Saldars and Mahindars.

6] The Court has only considered 30% disability and has not accepted the case of the claimant of 100% disability. The doctor has opined that the claimant can do work with the right hand and not with the injured hand. The disability certificate has been proved.

7] As far as penalty is concerned, the Commissioner had framed specific issue to that effect and gave opportunity to the parties to put forth their case even on aspect of penalty.

8] In light of the above no substantial question of law arises. As such, Appeal is dismissed. No costs.

[S.V.GANGAPURWALA,J.]

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