

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.936 OF 2013

The Managing Director,
Manjra Shetkari Sahakari Sakhar
Karkhana Limited,
Vilasnagar, Chincholirao Wadi,
Tq. and District Latur

..Appellant
(Ori. R. No.2)

VERSUS

1. Gamanbai Prabhu Rathod,
Age : 35 years, Occ. Nil,
R/o Harangul (Bk),
Tq. and District Latur (Ori. Claimant)

2. Pandurang Lobha Jadhav,
Age major, Occ. Contractor,
R/o Harangul (Bk),
Tq. And District Latur (Ori. R. No.1)
..Respondents

**(First Appeal is dismissed against
Respondent No.2 vide order dated
10th September, 2013)**

Mr Ajinkya Deshmukh, Advocate holding for Mr Vinayak D. Hon, Senior
Advocate for appellant;
Mr Suhas B. Ghute, Advocate for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 27th April, 2015

ORAL ORDER :

Heard finally with consent of the parties.

2. This Appeal is directed against the judgment and award dated 27th September, 2012, rendered by the Commissioner for W.C. Act & Judge, Labour Court, Latur.

3. Learned Counsel appearing on behalf of the appellant has raised a grievance that respondent no.1/original claimant was never in the employment of the appellant. In order to substantiate the said grievance, he has placed reliance on the testimony of respondent no.1 and would urge that the Contractor, i.e. respondent no.2 to the present petition, had hired the services of the husband of respondent no.1 for harvesting sugarcane. He would further urge that the Contractor is solely responsible for the accident, if any, and as such urged that the judgment saddling the liability under the Workmen's Compensation Act, deserves to be set aside.

4. While countering the above referred submissions, learned Counsel appearing on behalf of respondent no.1 has relied on the evidence of respondent no.1/claimant and the cross-examination thereof. He has also placed reliance upon the documents which were produced on record.

5. Having regard to the aforesaid submissions, the issue that is required to be gone into by this Court is, whether the Commissioner for

Workmen's Compensation Act was right in allowing the claim after evaluating the status of respondent No.1-claimant, as regards relationship of employer and employee.

6. While analyzing the above referred aspect, it is required to be noted that the present appellant filed the written statement at Exh.C-6 and denied the entire claim. According to the appellant, even if the accident had occurred during the course of employment, respondent no.1-claimant was not in the services of the appellant. The issues framed at Exh.C-4 and findings recorded thereon by the Commissioner, read thus :-

Sr. No.	ISSUES	FINDINGS
1	Does the applicant prove that she met with an accident arising out of and in the course of her employment with respondent No.2 ?	In affirmative
1-A	Whether the applicant prove that the opponent No.2 was principal employer ?	In affirmative
1-B	Whether the respondent No.1 proves that the applicant was the employer of applicant ?	In affirmative
2	Does the applicant prove that she become permanent total disabled due to accident and she lost her earning capacity ?	In partly affirmative
3	Whether the applicant is entitled for interest, if yes from whom and at what rate ?	In affirmative as per final order
4	Whether the applicant is entitled for interest, if yes from whom and at what rate ?	In affirmative as per final order

5	What order and relief ?	As per final order
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7. The learned Commissioner noticed that the occurrence of the accident is not in dispute. The Commissioner has also taken note of the fact that there was a contract between original respondents no.1 and 2 for cutting and transporting sugarcane. After recording the case of accident, the Commissioner has taken into account daily wages earned by respondent no.1/claimant.

8. The learned Commissioner has also taken into account the evidence of the claimant, so also the evidence of Dr. Gulve, the Medical Practitioner at Exh.U-22, who has supported the permanent physical disability to the extent of 56.6%. The loss of earning capacity is also evaluated to the extent of 60%, based upon the iota of evidence brought on record.

9. The claim put-forth by the appellant that there was no relationship of employer and employee and the liability is that of the Contractor, is to be examined in the background of above referred pleadings and evidence. It is required to be noted that the appellant has failed to establish its case that the liability to pay compensation is that of the Contractor and not the appellant. Once the appellant asserts the said fact that, it was the responsibility of the appellant to prove the said assertion.

10. After analyzing in depth the entire findings recorded by the Commissioner, it is noted that the Commissioner has ordered payment of compensation based on medical evidence and the fact about occurrence of the accident.

11. 40% disability and 60% loss of earning capacity, as is inferred by the learned Commissioner, appears to be just and proper.

12. In that view of the matter, no case for interference is made out. The appeal fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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