

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO.1354/2013
WITH
CIVIL APPLICATION NO.481/2015

Suyash Textiles ... Appellant

V/s.

Rohit Ashok Bhadange & Anr. ... Respondents

Mr. Panjkaj J. Das for the Appellant
Mr. B. A. Lawate for the Respondent No.1.
Mr. Rupesh Zade h/f. P. G. Sarda for Respondent No.2.

CORAM: K.K. TATED, J.
DATED : JULY 16, 2015

JUDGMENT :

1. Heard the learned counsel for the parties. By consent of the parties, matter is taken up for final hearing at the stage of admission itself as per order dated 27/09/2013 passed by this court.

2. This appeal is preferred by the original opponent No.1 challenging the award dated 20/04/2013 passed by the Judge, Labour Court, Solapur and Commissioner for Workmen's Compensation, Solapur in Application WC No.71/2009 holding that the claimant is entitled to compensation of Rs.2,28,733/- along with interest @ 12% p.a. from the date of accident i.e. 12/05/2009 till depositing the same in the court and /or payment to the other side.

3. For the sake of convenience, hereinafter the parties will be referred to as per their nomenclature in the Trial Court i.e. Appellant –

as original opponent No.1, Respondent No.1 - Applicant and the Respondent No.2 – original opponent No.2.

4. Few facts of the matter are, as under:

The opponent No.1 was doing business of production of brown cotton cloth at MIDC, Solapur. The Applicant was working with opponent No.1 and was getting salary of Rs.3000/- pm. He was working for more than 12 years. On 12/05/2009 the opponent No.1 sent some cotton bundle in a jeep to ginning factory and asked the Applicant to go to the said factory on a motor-cycle and get unloaded the cotton bundle in the factory. During that course, the accident occurred, in which the Applicant sustained injuries. The Doctor certified 60% disability. The Applicant filed Application under section 22 of the Workmen's Compensation Act 1923 (said Act) for compensation towards permanent disability. Same was decided by the Labour Court and held that the Applicant was entitled to a compensation amount of Rs.2,28,733/- along with interest @ 12% from the date of accident i.e. 12/05/2009. Hence, the opponent No.1 filed the present appeal.

5. The learned counsel for the opponent No.1 submits that the award dated 20/04/2013 passed by the Labour Court is against justice, equity and good conscience and same is liable to be set aside. He submits that the Labour Court failed to appreciate that the Applicant was not working with opponent No.1. He submits that the Applicant was not in the employment of opponent No.1 at no point of time. He further submits that though the Applicant failed and neglected to place on record any document to show that he was working with opponent

No.1, the Labour court held that the Applicant was in the employment of opponent No.1 and therefore, the opponent No.1 is liable to pay compensation.

6. The learned counsel for the opponent No.1 submits that the Tribunal awarded compensation on higher side. He further submits that the Applicant failed to produced on record any document to show that he was getting salary of Rs.3000/- pm. from opponent No.1. On the basis of this submission, the learned counsel for the opponent No.1 submitted that the impugned award passed by the Labour Court is liable to be set aside.

7. The learned counsel for the Applicant submits that the opponent No.1 has not framed any substantial question of law in the appeal memo. Hence, the appeal itself is not maintainable as per the provisions of the Workmen's Compensation Act, 1923. He submits that as per the said Act, an appeal is maintainable only if a substantial question of law involves therein. He submits that whether the Applicant was in the employment of Respondent No.1 or not, cannot be a substantial question of law. He further submits that whether the Applicant suffered 60% disability or not is also not a substantial question of law. Hence, the First Appeal is required to be dismissed with costs.

8. On the other hand, the learned counsel for the Applicant vehemently opposed the present First Appeal. He submits that the Labour Court, after considering the evidence on record rightly held that the Applicant was working with opponent No.1 and was getting salary

of Rs.3000/-pm. He submits that the Applicant examined Dr.Madhusudan Joshi, Medical Practitioner, M.S. Ortho (Exhibit U-31) in support of his contention that the Applicant suffered multiple fracture injuries because of the said accident. He further submits that said Doctor issued certificate of disability (Exhibit U-32) showing that the Applicant suffered 60% permanent disability. He further submits that even the Doctor specifically stated that due to the said disability, the Applicant was unable to perform his previous routine work.

9. Heard both sides at length. I have gone through the copy of the claim Application filed by the Applicant, written statement filed by opposite party, deposition of various witnesses, documentary evidence on record and the submission made by the respective counsel.

10. After considering the submission made by the counsel for opponent No.1, as per his contention, following two substantial questions of law are involved in the present appeal.

i) Whether the Applicant proved that he was in the employment of opponent No.1 and whether the accident occurred during the course of the employment?

ii) Whether the compensation awarded by the Tribunal is reasonable ?

11. It is to be noted that in the present proceedings the Applicant, by his Application dated 20/07/2010 placed on record various documents to show that he was working with opponent No.1. Those documents were as under:

- i) Luggage slip issued by Khurana Travels in respect of the goods handed over by the Applicant on behalf of opponent No.1.
- ii) Tapal receipts issued by the Khurana Travels which were collected by the Applicant on behalf of Respondent No.1.
- iii) Cheques deposited by the Applicant in Arjun Coop. Bank on behalf of opponent No.1.
- iv) Cash deposited by the Applicant in Vikas Coop. Bank Ltd. on behalf of opponent No.1.
- v) Visitors' pass issued by Krish Group of Companies, Bhilar for attending the work of opponent No.1.

12. It is to be noted that these documents were considered by the Trial Court and decided the matter on its own merits and held that the Applicant was in service of Respondent No.1. It is to be noted that in the present proceedings the burden lies only on opponent No.1 to establish that the Applicant was not at all employed by them. The opponent No.1 had not come forward to produce relevant documents to establish these facts. The learned Judge has drawn an adverse inference and came to the conclusion that the Applicant was workman with opponent No.1 and sustained injuries while he was working with them. Hence, whether the Applicant was in service of Respondent No.1 or not, cannot be a substantial question of law in an appeal under section 30 of the said Act. Hence, I answer question No.(i) in the affirmative.

13. In the present proceedings the Applicant examined Dr.Madhusudan Joshi, Medical Practitioner, M.S. Ortho. (Exhibit U-31) who categorically stated that the Applicant sustained 60% disability. It

is further stated by the said witness that due to said disability, the Applicant was unable to perform his previous routine work. Considering these facts, the Labour Court awarded compensation for 60% permanent disability to the tune of Rs.2,28,733/-. As the Trial Court decided the said issue on the basis of documents on record and considering the 60% disability, the point No.(ii) cannot be termed as substantial question of law. Hence, question No.(ii) is answered in affirmative.

14. In view of the above findings, the First Appeal stands dismissed.

15. Consequently, the Civil Application stands dismissed as infructuous.

(K.K. TATED, J.)