

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 129 OF 2005

Madhukar S/o. Sopanrao Phukane, Aged 32
Years, Occupation Agriculture, Resident of
Gaundgaon, Taluka Gangakhed, District
Parbhani

APPELLANT

V E R S U S

1 Mangalabai W/o Vasantao Karhale, Aged 30
Years, Occupation Household, Resident of
Gaundgaon, Taluka Gangakhed, District
Parbhani

RESPONDENT

2 Sudhakar S/o Vasantao Karhale, Aged
Minor

3 Udhav S/o Vasantao Karhale, Aged Minor,

Respondent Nos. 2 and 3 are under
guardianship of real mother Mangalabai W/o
Vasantao Karhale i.e. Respondent No.1

Mr. V.D. Salunke, Advocate for the Appellant
Mrs. A.N. Ansari, Advocate for Respondent Nos. 1 to 3

CORAM : A.V. NIRGUDE, J.

DATE : 24th August, 2016

ORAL JUDGMENT

1. This Appeal challenges the Judgment and Award dated 7th December, 2004, passed by the Ex-Officio Commissioner for Workmen's Compensation, Parbhani, in F.A. Claim No. 05 of 2001.

2. ***The facts leading to this litigation, in short, can be stated as under :-***

One Vasant Karhale was said to be an employee of the appellant Madhukar. He was working as yearly agricultural help. On 12th May, 1999, as per the direction of the appellant, Vasant went to collect the compost from a dunghill and carried it to appellant's land. Vasant came in contact with a live wire and died instantly due to electric shock. According to the respondents – claimants, Vasant was getting salary of Rs.13,000/- per annum and 12 quintal jawar. Since Vasant died during the course of his employment, his claim was moved.

3. Appellant Madhukar opposed the claim. He denied the relationship with Vasant as 'employer'. He also took a lame defence that the Court had no jurisdiction. The learned Commissioner framed proper issues and allowed the parties to lead evidence. He came to the conclusion that Vasant was an yearly agricultural help of appellant Madhukar and he died during the course of his employment. Application thus was allowed and compensation was granted.

4. Madhukar, the employer filed this appeal. The learned counsel for the appellant raised two points.

First point is about jurisdiction of Commissioner's Court at Parbhani. He asserted that the incident in question took place in Gangakhed Taluka and since there is a Civil Court at Gangakhed, Civil Judge at Parbhani had no jurisdiction. This objection was rejected long back. The cases filed under the provisions of Workmen's Compensation Act are required to be filed in a Civil Court where additional charge of the Ex-Officio Commissioner for workmen's compensation is assigned. The Civil Judge, Senior Division, Parbhani is designated with powers of the Ex-Officio Commissioner for Workmen's Compensation. In view of this, it was for the appellant to indicate that such powers were also given to the Civil Judge, Senior Division, Gangakhed at the relevant time. This was not shown.

5. The second point that is required to be decided in this appeal is, whether the respondents could prove that Vasant was in the employment of the appellant Madhukar? Vasant's widow and another witness deposed that Vasant indeed was in employment of Madhukar. On the other hand, Madhukar in his deposition asserted orally that he had no concern with Vasant. This is a case of word against word. The learned Commissioner rightly believed the depositions of respondent no. 1 and her witness on this point. He pointed out that they had no reason to depose falsehood. Even Madhukar admitted in his cross-examination that the witness of Respondent No. 1 is known to him since long and has got cordial relation with him. In view of this, both the points raised by the learned counsel for the appellant are required to be rejected.

6. The Appeal deserves to be dismissed. Appeal stands dismissed.

7. In view of disposal of the First Appeal, Civil Application No. 2443 of 2005 stands disposed of.

(A.V. NIRGUDE, J.)

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