

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

FIRST APPEAL NO. 1539 OF 2014

1. Smt. Asha Pralhad Karle
Age : 39 years, Occ: Housewife,
2. Amol Pralhad Karle
Age : 22 years, Occ: Education,
3. Aniket Pralhad Karle
Age : 20 years, Occ: Education,

Appellant Nos. 1 to 3 reside at
Village Valan, Taluka Rahuri,
District Ahmednagar.

... Appellants

(Orig. claimants no. 1 to 3)

Versus

1. Sarpanch,
Grampanchayat Valan,
Taluka Rahuri,
District Ahmednagar.
2. Upsarpanch,
Grampanchayat Valan,
Taluka Rahuri,
District Ahmednagar.
3. Gramsevak,
Grampanchayat Valan,
Taluka Rahuri,
District Ahmednagar.

... Respondents

(Orig. respondents)

...

Advocate for Appellants : Mr V. V. Tarde

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CORAM : V.K. JADHAV, J.

Dated: May 02, 2016

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ORDER :-

1. Being aggrieved by the Judgment and Order dated 6.1.2014 in Application (WC) No.64 of 2009, the original claimants have preferred this appeal.

2. Brief facts, giving rise to the present appeal, are as follows :-

a] On 17.2.2009 at about as per directions given by the Respondents, late Pralhad Karle was doing a work of replacing electric bulb by climbing on electric pole of street light of Gram Panchayat. He was doing said work at about 04.30 p.m and while doing that work, he had fallen on the ground. In consequence of which, he had sustained grievous injuries. He was immediately shifted to hospital, where he succumbed to the injuries on 26.02.2009 while under treatment. The legal representatives of deceased Pralhad preferred an application under the Workmen's Compensation Act,1923 bearing Application (WC) No.64/2009 for grant of compensation. Deceased Pralhad was serving as a peon on monthly salary of Rs.2,400/-. His death

occurred out of and during the course of his employment.

b] Respondents no. 1 and 2 have not filed their written statement, however, respondent no.3 strongly resisted the application by filing his written statement. It is denied that deceased Pralhad was doing the work of replacing bulb on street light as per directions of the respondents. It is also denied that death of Pralhad Karle occurred out of and during the course of his employment. It is admitted that deceased Pralhad was in service of the Gram Panchayat as a Peon. As per the duty list prepared by the Gram Panchayat, he was not supposed to carry out the work of replacing bulbs on street lights. It is also contended that on the date of accident, deceased Pralhad Karle was not on duty.

c] Learned Commissioner for Workmen's Compensation & Judge, Labour Court, Ahmednagar, by its impugned Judgment and Order dated 6.1.2014, dismissed the application with costs. Hence, this appeal.

3. Learned counsel for the appellants/applicants submits that duty list is placed on record before the Commissioner and the same is marked at Exh.U-13. Besides daily work of Gram Panchayat, as per serial no.5 of the duty list, deceased Pralhad was supposed to carry out work as per directions given to him by the Sarpanch, Upsarpanch, Gram Panchayat Members and also the Gramsevak. Respondents no.1 and 2, who are the Sarpanch and Upsarpanch of the said Gram Panchayat, have not filed their written statement and they have not contested the Application (WC) as such. It is also not denied by them by filing written statement that, no such instructions were given to deceased Pralhad to replace bulbs of the street lights. Undisputedly, street lights in the village are maintained by the Gram Panchayat. So far as muster roll is concerned, on 16.2.2009 and 17.2.2009, signature of the deceased is absent. By taking undue advantage of the same, respondent no.3 made a statement before the Commissioner that deceased Pralhad was absent on duty on the date of accident. Deceased Pralhad was serving as a peon and it is usually a practice in Gram

Panchayat that, for a person like deceased Pralhad, who was working as a peon, to sign the muster roll as and when convenient. The muster rolls are not therefore regularly maintained and placed in a conspicuous part of the office of Gram Panchayat. It is not a corporate office and it is simply a Gram Panchayat office and signing or not signing on the muster roll is not of much importance. Deceased Pralhad was on duty and his wife-claimant no.1 has deposed to that effect.

4. Learned counsel further submits that the Commissioner has wrongly dismissed the claim on the ground that there are contradictory statements in the Police documents. So far as F.I.R. Exh.U-8 is concerned, the F.I.R. is not lodged by an eye witness to the incident and the same is lodged by the Head Constable on the basis of hearsay evidence. Furthermore, inquest panchnama was also drawn on 26.2.2009 and the statement referred in the inquest panchnama is also a hearsay statement. So far as spot panchnama is concerned, there is a specific mention that, deceased Pralhad had fallen down from the electric pole and met

with an accidental death. Learned Commissioner has not considered the certified copies of A.D. Inquiry report submitted by the Police Constable before SDO, which are accepted by the SDO, and accordingly, the SDO issued summary about accidental death of deceased Pralhad with specific observations that he met with an accidental death due to falling from the electric pole while replacing bulbs on street light. Even though certified copies of the Police papers and order passed by the SDO were placed before the Commissioner, the same are not considered for the reason that those documents are placed before the Commissioner at belated stage. The report submitted after due inquiry by the Police u/s 174 of the Criminal Procedure Code and the order passed by the SDO on the basis of said report are vital documents and the Commissioner should have accepted straight way those documents. Even other side had not raised any objection when said documents were produced before the Commissioner. Even though the Commissioner has allowed production of said documents on the application submitted at Exh.U-25 and accepted the list Exh.U-26, failed to consider those

documents. It is also referred in various police documents that there is a neem tree just adjacent to the electric pole and there may be confusion while filing F.I.R. that deceased met with an accidental death while cutting the branches of the said tree. Learned Commissioner has not considered anything and straight way dismissed Application (WC) No.64/2009. Claimant no.1 is a widow and claimant nos. 2 and 3 are the minor claimants. Even though, death of Pralhad occurred out of and in the course of his employment, the Gram Panchayat has avoided to pay compensation. The claimants are, thus, entitled for compensation as per the relevant provisions of law and their application for grant compensation may kindly be allowed with costs.

5. Though the respondents are duly served and even though notice of final disposal is also served on them, none appears for them before this Court.

6. So far as duty list placed on record is concerned, the duty assigned to deceased Pralhad at Serial No.5 indicates that he had to act as per the instructions

given to him by the Sarpanch, Upsarpanch, Member of the Gram Panchayat and the Gramsevak from time to time. Respondents No.1 and 2 i.e. Sarpanch and Upsarpanch of the Gram Panchayat have not filed their written statement when the claimants have approached the Commissioner with specific pleadings that deceased Pralhad was replacing the bulbs on a street light electric pole as per the directions given to him by the respondents. Undisputedly, street lights in the village are maintained by the Gram Panchayat. In my considered opinion, on the date of accident, there was absolutely no reason for the deceased Pralhad to climb on the electric pole of street light and replace the bulb without any directions or instructions in this regard from the respondents. It appears that the respondents, by placing the duty list on record, have conveniently taken a stand to deny the liability to pay compensation to the legal representatives of the deceased Pralhad.

7. So far as signing on muster roll is concerned, I fully agree with the submissions made by learned counsel for the appellant. Muster roll is maintained by

the Gram Panchayat and generally a person, serving as a peon, signs on the muster roll as and when he gets time after the duties assigned to him are over. Claimant no.1 has stated in her evidence that on 17.2.2009, her deceased husband Pralhad was on duty and on that day at about 04.30 p.m., he was replacing the bulbs on the electric pole and met with an accidental death due to falling down on the road. Respondent No.3, who has examined himself, deposed that on 15.2.2009, column of muster roll is blank as it was Sunday, however, on 16.2.2009 and 17.2.2009 deceased Pralhad remained absent. He could not explain that on 16.2.2009, when the deceased Pralhad remained absent from duty, why notice was not given to him. He has further admitted in his cross examination that deceased Pralhad was required to carry out the orders/instructions given to him by Sarpanch, Upsarpanch and Members of the Gram Panchayat. It appears from the evidence of respondent No.3 that he is taking undue advantage of non signed muster roll. However, it cannot be ignored that at the time of accident, deceased Pralhad was replacing bulb by climbing on an electric pole of the

street light which is maintained by the Gram Panchayat. Under no circumstances deceased Pralhad was required to climb the electric pole of a street light in the village on his own without there being any specific instructions in this regard. It is also not possible that, by remaining absent on duty, deceased Pralhad had climbed on the electric pole of the street light on his own without any instructions.

8. So far as police documents are concerned, it is specifically mentioned in the spot panchnama that, there is a neem tree adjacent to the said pole where the accident had taken place. It appears that the F.I.R. Exh.U-8 came to be lodged by Police Head Constable on behalf of the State on the basis of hearsay information. It is not clear from the contents of F.I.R. that, as to who has given information to the concerned Police Station about the manner of accidental death of deceased Pralhad. However, during the course of inquiry of accidental death, it appears from the certified copies of the report submitted by the police station to the SDO that the concerned Police Sub-Inspector has recorded

the statements of near about eight witnesses and submitted his report to the SDO with the specific conclusion that deceased Pralhad had climbed the electric pole of street light for replacing bulbs on the date of accident and had fallen down on the road from the electric pole and sustained injuries. It has further stated in the said report that nobody has given any other reason of his death and accordingly request is made in the said report to the SDO to issue summary to that effect. Accordingly, SDO had issued summary in terms of the conclusion drawn by the PSI in the said report. I do not find any reason as to why learned Commissioner has not considered these vital documents. The learned Commissioner has given unnecessary importance to the contradictory statements recorded in the police documents such as F.I.R., Spot Panchnama by ignoring the fact that said statements have been recorded in those police documents on the basis of hearsay information. It appears that the learned Commissioner has ignored the best evidence available before him and placed his reliance on certain contradictory statements in the

police documents and dismissed the application wherein the compensation is claimed on account of death of a permanent employee.

9. The learned counsel for the appellant has rightly placed his reliance on the decision in the case of ***Zubeda Bano wd/o Abdul Aziz Qureshi and others vs. Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur and others***, reported in ***1990 (2) Mh.L.J. 685*** wherein, in paragraph no.4 of the judgment, the Division Bench of this Court at Nagpur has made following observations :-

“4. Having heard the parties and perused the record it seems to us that the entire approach of the commissioner was hyper technical and this appeal deserves to be allowed.

It is true that there is no direct evidence of the incident. It is equally true that very scanty material is available on record about the circumstances in which the incident took place. But the absence of ample evidence should not relieve the Court of its duty to arrive at a conclusion on the vital issues on the basis of

available material. The Evidence Act as such does not apply to the proceedings under the Act, as has been held in Union of India vs. T.R. Varma, AIR 1957 SC 882, and Burhwal Sugar Mills Ltd. vs. Ranjan, 1982 Lab.L.J. 84. The Act is a beneficial legislation intended to give some security to the workman in certain types of employment. Indeed it contains a sort of mini-insurance scheme. The liability of the employer under the Act is conceptually quite different from the liability under tort. All these facts therefore, call for a broad and liberal construction of the Act, lest its evident object is defeated. "When evidence is balanced" observes Gujarat High Court in the case of Bal Shakri vs. New Manekchowk Mills Ltd., 1961 (1) L.L.J. 585, "if the evidence, shows greater possibility which satisfied a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed".

10. In light of the above observations and also the fact that the Commissioner allowed production of report submitted by the PSI requesting therein for issuance of summary and the SDO has accordingly issued the summary about accidental death with the observations

as mentioned in detail above, I am inclined to accept those documents and also prefer to read said documents submitted alongwith list Exh.U-26.

11. Claimant No.1 has deposed before the Commissioner that her deceased husband Pralhad was getting Rs.4,500/- to Rs.5,000/- p.m. as gross salary. However, to substantiate the same, she has not placed any salary certificate on record. Respondent No.3, as it appears from the affidavit of evidence, brought before the Commissioner original salary register and further placed on record the extract of salary for the year 2006-2007. Thus, as per salary certificate Exh.U-12, deceased Pralhad was getting salary of Rs.2,400/- per month prior to his death as per his appointment order dated 25.1.2005. The learned Commissioner has also considered the same while recording findings to issue no.3 as "Rs.2,400/- p.m.". As per salary extract at Exh.C/14, in the year 2006-2007, deceased Pralhad was getting Rs.1,500/-. It is, thus, appropriate that in the year 2009 when he met with an accidental death, he was getting Rs.2,400/- per month as total salary.

12. Thus, in terms of the provisions of Section 4 of the Employees Compensation Act, 1923, claimants are entitled for compensation. As per school leaving certificate placed on record, date of birth of deceased Pralhad is 1.6.1961. Thus, on the date of accident, deceased Pralhad was 48 years old. In view of the provisions of section 4 of the Act, 50% of his wages, if considered for the purpose of compensation, comes to Rs.1,200/- p.m. and as per his age, after applying relevant multiplier 159.80, total compensation comes to Rs.1,91,760/-. The claimants are entitled for the same along with interest @ 12% p.a. from the date of application till realization of the entire amount. So far as penalty is concerned, learned counsel, on instructions submits that the claimants would not press for the penalty. In view of this, following order is passed.

O R D E R

- I. First Appeal is hereby partly allowed.
- II. The Judgment and Order dated 6.1.2014 passed by the Commissioner for Workmen's Compensation & Judge, Labour Court,

Ahmednagar, in Application (WC) No.64/2009 is hereby quashed and set aside.

III. Application (WC) No.64/2009 is hereby partly allowed with proportionate costs and the respondents are hereby directed to pay compensation of Rs.1,91,760/- jointly and severally to the claimants with interest @ 12% p.a. from 17.03.2009 i.e. one month from the date of accident till realization of the entire amount.

IV. First appeal is accordingly disposed of.

sd/-
(**V.K. JADHAV, J.**)

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aaa/-