

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

First Appeal No.1624 of 2004

* M/s Garware Polyesters Ltd.
Plot No. K-199, Waluj IA,
Taluka Gangapur,
District Aurangabad.
Through the Vice President. **.. Appellant.**

Versus

- 1) Usha Shilwant Thorat,
Age 27 years in her own
capacity and in capacity of legal
guardian (mother) of her minor
children.
- 2) Padmini Shilwant Thorat.
- 3) Praja Shilwant Thorat.
- 4) Pradnya Shilwant Thorat.
All residents of Mahunagar,
New Balajinagar, Aurangabad.
- 5) M/s. Akshay Engineering,
K-199, Waluj IA, Aurangabad. **.. Respondents.**

Shri. T.K. Prabhakaran, Advocate, for appellant.

Shri. S.S. Tathe, Advocate, for respondent Nos.1 to 4.

CORAM: T.V. NALAWADE, J.

DATE : 24th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed against the judgment and award of WC Application No.25 of 1997 which was pending before the Commissioner appointed under the Workmen's Compensation Act 1923 at Aurangabad.

2) The claim was filed by the present respondent Nos.1 to 4 in respect of death of one Shilwant Thorat. Original claimant No.1 is the widow of the deceased and other claimants are minor issues of the claimant No.1 born from the deceased.

3) It is the case of the original claimants that deceased was employed with original opponent No.1, Akshay Engineering Company, MIDC Waluj as a welder and he was working there since 1-8-1994. The incident took place in the premises of the factory of respondent No.1 on 2-3-1996. It is the case of the claimants that respondent No.1 - Akshay Engineering Company had taken the work of construction of iron tanks of respondent No.2 and the deceased was doing the welding work of

such tank. It is contended that due to sudden supply of electricity power of high voltage there was leakage of current, there was sparking and the deceased sustained the shock and burn injuries. He succumbed to the injuries on the same day in Government hospital.

4) It is the case of the claimants that respondent No.1 was paying monthly wages of Rs.3000/- to the deceased and the age of the deceased was 35 years. It was contended that after the incident notices were given to the respondent Nos.1 and 2 but compensation was not paid and so the proceeding was required to be filed. The claimants relied on the evidence of the claimant and some colleagues of the deceased and the papers prepared by police like panchanama etc.

5) Opponent No.1, respondent No.5, Akshay Engineering Company filed written statement and contested the matter. It contended that opponent No.1 was in the business of manufacturing of metal tanks as per the requirements of customers. It contended that the deceased was the welder and was doing the job of

fabrication on contract basis with respondent No.1 but he was doing similar work for other companies also. Names of such companies are given in the written statement. It is contended that at the relevant time, Garware Polyesters Company Limited, respondent No.2 had placed order with respondent No.1 for manufacturing of two air receivers. It is contended that the work of fabrication of these two air receivers was given by respondent No.1 to deceased Shilwant. It is contended that the deceased was expected to complete this work within two months and raw material and supply of electricity was given by respondent No.1. The fact of the incident was not disputed by respondent No.1. However, respondent No.1 contended that the deceased was not the workman for the purpose of WC Act 1923 and so respondent No.1 is not liable to pay any compensation. It was also denied that the respondent No.1 was paying monthly salary of Rs.3000/- to the deceased. It was contended that respondent No.1 was to pay Rs.15,000/- to the deceased for the fabrication work of the aforesaid two air receivers.

6) Respondent No.2, Garware Polyesters Limited filed written statement and contested the matter. It denied that it had appointed respondent No.1 as a contractor. It denied that it had hired deceased as workman directly or through respondent No.1. It contended that the deceased never worked on the establishment of respondent No.2. It contended that respondent No.1 was independent employer and the deceased was working in the premises of respondent No.1. It was contended that respondent No.1 was not doing business only for the respondent No.2 and respondent No.2 was not the only customer of respondent No.1 and there was relationship of purchaser and seller between respondent Nos.2 and 1. It denied that it is liable to pay compensation in respect of the death.

7) Before the Commissioner the claimants gave evidence and respondent No.1 also gave evidence. The Commissioner held that respondent No.1 was doing the work of fabrication of two air receivers for respondent No.2 and for that work the deceased was engaged, employed by respondent No.1 and while doing this work, the incident in question took place. The Commissioner has

directed both the respondents to pay compensation jointly and severally.

8) While admitting the appeal this Court has held that substantial questions of law need to be formulated on the basis of grounds (i) and (iv) mentioned in the appeal memo. So, following substantial questions of law are involved in the matter.

(i) Whether a purchaser/customer is liable for workmen compensation of a person/workman of the supplier ?

(iv) Whether the WC Commissioner has jurisdiction to proceed against a third party, unless he is an employer, contractor, or indemnifier ?

9) The original claimants have come with specific case that the deceased was employed by respondent No.1 Akshay Engineering Works and respondent No.1 was making payment on monthly wages basis. Though the claimants have contended that at the relevant time the work of construction of two air receivers for respondent No.2 was going on in the premises of respondent No.1, it

can be said that the claimants had no personal knowledge about the work. It is not disputed that the incident took place in the premises of respondent No.1 and there is specific admission of respondent No.1 that it had supplied raw material and electricity for the fabrication work. He has also admitted that the amount was to be paid for this work to the deceased by respondent No.1.

10) Whether the respondent No.1 had appointed respondent No.1 as the contractor could have been decided on the basis of material which could have been produced by the respondent No.1 or respondent No.2. Respondent No.1 had come with specific case that respondent No.2 had placed order with him for manufacture of two air receivers. If this contention is accepted as it is, it can be said that respondent No.2 was to purchase the two air receivers from respondent No.1. No record in respect of this order was placed before the Commissioner by respondent No.1 when respondent No.2 has denied that respondent No.1 was the contractor of respondent No.2. On the other hand, respondent No.1 has specifically contended that the deceased was working

for him though on contract basis at the relevant time. In view of these circumstances and the case of respondent No.1 that he himself had engaged the deceased on contract basis for fabrication work, inference was not possible that the deceased was employed either directly or through respondent No.1 by respondent No.2. Even if the case of the respondent No.1 and his evidence is accepted as it is, it can be said that respondent No.2 wanted to purchase two air receivers from respondent No.1 and it was up to respondent No.1 to manufacture such two air receivers and sell them to respondent No.2. If the definitions of employee and workman given in the WC Act are kept in mind it cannot be said that the deceased was employed by respondent No.2 either directly or through respondent No.1. There is virtually no record to prove such case. Everything is denied by respondent No.1. This Court has no hesitation to hold that the Commissioner has committed error in holding that present appellant, respondent No.2 had employed the deceased. No liability could have been fastened on the appellant in respect of death of the person who was working for respondent No.1 in the premises of respondent No.1. The decision given by

the Commissioner cannot sustain in law. In the result, the aforesaid points are answered accordingly in negative and following order is made :-

11) The appeal is allowed. The judgment and order of the Commissioner fastening the liability on the appellant is hereby set aside and the claim made as against respondent No.2, appellant stands dismissed. The claimants can recover the amount from respondent No.1. If the compensation is deposited in this Court or with the Commissioner by the appellant, it is to be returned to the appellant.

Sd/-
(T.V. NALAWADE, J.)

rs1