

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

**FIRST APPEAL NO. 1673 OF 2014
WITH
CA/9604/2014 IN FA/1673/2014
WITH
CA/16281/2015 IN FA/1673/2014**

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Kailashseth Rameshwar Loya (the owner)
age 46 years, Occ. Business,
plot No.11, New M.I.D.C., Jalna
Tq. & Dist. Jalna.

..Appellant..
[orig.opponent no.1]

VERSUS

1. Aananda s/o Subhash Dhilpe,
age 26 years, Occ. Nil,
R/o at Mandwa, Tq. Badnapur,
Dist. Jalna.

2. Vitthal s/o Ambadas Rathod,
age 40 years, Occ. Contractor,
R/o at Chandanzira, Jalna,
Tq. & Dist. Jalna.

3. The Superintending Engineer,
Maharashtra State Electricity
Distribution Company Limited,
Jalna. (deleted).

..Respondents..
(Resp 1 Orig claimant
Resp No.2 Orig resp.)

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Advocate for Appellant : Mr N K Chaudhari
Advocate for Respondent 1 : Mr M N Kolhe
Respondent No.2 – Served absent.
Respondent No.3 – Deleted.

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CORAM : V.K. JADHAV, J.**Dated: April 06, 2016**

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PER COURT :-

1. By consent of the parties, heard finally at admission stage.

2. Being aggrieved by the Judgment and Award dated 27.08.2014 in Application (E.C.) No.02 of 2013, the original respondent no.1 i.e. the principal employer has preferred this appeal.

3. Brief facts, giving rise to the present appeal, are as under :-

a] The Respondent Claimant Aananda was working as a labourer with the appellant/original respondent no.1 through contractor in the year 2011. On 16.1.2011 at about 1.20 p.m. when the respondent-claimant was performing his regular duty, he received a shock of electric wire and sustained injuries. The injuries sustained by the respondent-claimant resulted into amputation of his left hand below elbow. He has also sustained burn injuries on both of his legs up to thigh

level. The Respondent-claimant thus become permanently disabled. Consequently, he has claimed compensation u/s 4 of the Employees' Compensation Act, 1923 (hereafter referred to as "Act of 1923") by filing an application (EC) No.2/2013 before the Labour Court, Jalna. The learned Judge of the Labour Court, Jalna, has partly allowed the application and thereby held that the respondent/claimant is entitled for the compensation of Rs.5,50,544/- from the non applicant nos. 1 and 2, who are jointly and severally liable to pay the same to the claimant. Hence, this appeal.

4. The learned counsel for the appellant submits that, the appellant was the manufacturer of steel and work of construction of factory building was going on in the factory premises. Learned counsel further submits that, said construction work of factory building was given on contract basis to respondent no.2 Vitthal Rathod. Said respondent no.2 Vitthal Rathod had employed the claimant as labour. Learned counsel submits that, the appellant is carrying the business of manufacturing of steel and construction work of factory

building is not a ordinary work of business in terms of section 12 of the Act of 1923. Learned counsel submits that, the appellant even then incurred all the medical expenses of respondent claimant. Learned counsel further submits that, the medical certificate which is in form Comp 'B' marked as Article 'A' is not duly proved before the Court below and, even then the learned Judge of the Labour Court has considered the same. Learned counsel further submits that, even if, said certificate is considered, as per schedule I part II of the Act of 1923, so far as amputation from [11.43] cms below tip of olecranon is concerned, the percentage of loss of earning capacity is 60% and not 70% as mentioned in the certificate article 'A'. Learned counsel submits that, if the relevant factor for the age group of 24 is considered, as per Schedule IV of the Act of 1923, at the most compensation comes to the tune of Rs.4,71,895/-. Learned counsel further submits that, there is no way to find out as to how the learned Judge of the Trial Court has calculated the amount of compensation to the tune of Rs.5,50,544/-. Learned counsel submits that, the appellant has already

deposited the entire amount prior to remand order passed by this Court. Learned counsel submits that, excluding the amount of Rs.5,50,544/- as worked out by the Court below, the appellant has received the amount, however, the appellant has not received the interest accrued thereon. Learned counsel for the appellant, in order to substantiate his submissions placed his reliance on a case **Rabia Mohamed Tahir Vs. GIP Railway** reported in **AIR 1929 Bombay 179**.

5. Learned counsel for respondent/original claimant submits that, the learned Judge of the Trial Court has rightly appreciated the evidence on record and, awarded just and reasonable compensation in accordance with law. Learned counsel submits that no interference is required and the appeal is liable to be dismissed with costs.

6. None appears for respondent No.2.

7. Learned counsel for the appellant fairly submits that, Rabia Tahir's case (supra) was considered by the

Full Bench of the Bombay High Court and it is held that, in the said case of Rabia Tahir (supra) no proposition of law laid down as such and, further held that question which arises under section 12 (1) is normally a pure question of fact and it can be only answered by reference to evidence as to the nature of the principal's business.

8. Section 12 of The Employee's Compensation Act, 1923 reads thus :-

“12. Contracting.-

[\(1\)](#) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

[\(2\)](#) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor,² or any other person from whom the workman

could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation,] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”

9. Learned counsel for the appellant is fair enough to bring to the notice of this Court the case of **Superintendent Lokhart Estate Vs. Kaliappan** wherein Kerala High Court has referred the decision in a case of **Vijayaraghavan Vs. Velu reported in [1973 LLJ 490]** in which the High Court of Kerala has made following observations :-

“The scheme of [Section 12](#) of the Workmen's [Compensation Act, 1923](#) is intended to secure to a workman the right to claim compensation not only against his immediate employer, who in the Act is referred to as a contractor, but also against,

the person who had employed such contractor to execute the work which is ordinarily part of the trade or business of such persons. [The Act](#) refers to him as the principal, There may be cases where the contractor may not be a man of means or it may be that wittingly or unwittingly he may possibly be part of an arrangement conceived by the principal to avoid confrontation directly with the workman engaged in the execution of the work. In either case the interests of the workman need to be protected and that is what the provision secures to him. The principal can seek to be indemnified by the contractor if he has been made answerable for the payment of compensation. But to invoke the provisions of the section it is necessary the accident should have occurred on, in or about such premises on which the principal has undertaken or usually undertakes to execute the work or premises which are otherwise under his control. Therefore, we do not find any difficulty in upholding the view expressed by the Workmen's Compensation Commissioner on the question of liability of the principal employer. We also agree with the finding that the Estate is the principal employer.”

10. In the case in hand, even though, the appellant was a manufacturer of steel, it is not disputed that the construction work of a factory building was going on in the premises of the factory and, said work was given on contract to respondent no.2 Vitthal Rathod.

Respondent no.2 Vitthal had employed the respondent-claimant as a labour and claimant sustained injuries out of and in the course of employment in the premises of factory. Thus, in view of the provisions of section 12 of the Act of 1923 and, in view of the observations made by the Kerala High Court in a case of Vijayaraghavan (supra), the learned Judge of the labour Court has rightly fastened the liability on the appellant/original respondent no.1.

11. In view of Schedule II of the Act of 1923, the relevant factors mentioned therein are required to be considered. In the case in hand, school leaving certificate of respondent-claimant is produced on record and as per the contents of the said certificate, his date of birth is 5.6.1987. It appears that, the respondent-claimant has not completed age of 24 years as on the date of the accident. Consequently, the factor 219.95 would be the relevant factor as per Schedule IV to the Act, 1923. As per section 4-(a) of the Employee's Compensation Act, 1923, the respondent claimant is entitled for the compensation amount for the permanent

disablement sustained by him to the extent of 70%. As per schedule I part II of the Act of 1923, the amputation from 20.32 cms from the tip of the acromion to less than 11.43 cms below tip of olecranon percentage of loss of earning capacity is 70%. The permanent disablement certificate which is issued in form Comp 'B' though it is not exhibited, the learned Judge of the Labour Court has referred the same in the judgment and it appears from the record that the appellant has not raised any objection for the same. Said permanent disability certificate in form comp 'B' article 'A' has been issued by the Government Hospital. It is noted in the certificate that, there is amputation with claw hand and the percentage of the permanent disability is 70%. In view of this, as per serial no.3 in part II of Schedule I of Act of 1923, percentage of earning capacity of respondent-claimant is required to be considered as 70% and not 60% as submitted by the learned counsel for the appellant. In view of this, the respondent/original claimant is entitled for the compensation amount of Rs.4,75,092/- and not more than that. It appears that, the learned Judge of the Trial Court has erroneously

calculated the amount of Rs.5,50,544/- instead of Rs.4,75,092/-. In view of this, following order is passed.

ORDER

- I. First Appeal is hereby partly allowed.
- II. The Judgment and Award passed by the Judge, Labour Court, Jalna dated 27.08.2014 in Application E.C.No.2/2013 is hereby modified in the following manner :-

“The respondent/applicant is entitled for the compensation amount of Rs.4,75,092/- (Rs. Four lacs seventy five thousand ninety two only) from the appellant/orig opponent no.1 and 2 jointly and severally and they are liable to pay the same to the respondent no.1/original claimant.”

- III. During the pendency of the appeal, the respondent no.1/original claimant had withdrawn an amount of Rs.2,75,277/- (Rs. Two lacs seventy five thousand two hundred seventy seven only) i.e. 50% of Rs.5,50,544/- . The Respondent-claimant is entitled to withdraw remaining amount of Rs.1,99,815/- (Rs. One lac ninety nine thousand eight hundred fifteen only) alongwith the accrued interest on the entire amount of compensation i.e. Rs.4,75,092/-(Rs. Four lacs seventy five thousand ninety two only).

IV. The appellant has deposited an amount of Rs.9,83,115/- prior to remand. The appellant has already received an amount of Rs.4,32,571/-. Hence, the appellant is now entitled for refund of the amount of Rs. 75,452/- (i.e. Rs.5,50,544/- – Rs.4,75,092/-). The appellant is also entitled to the accrued interest on the amount Rs.4,32,571/- till it was refunded and the interest on the amount of Rs.75,452/- during the pendency of the appeal.

V. The respondent-claimant is entitled to withdraw an amount of Rs.1,99,815/- (Rs. One lac ninety nine thousand eight hundred fifteen only) alongwith the accrued interest during the pendency of this appeal.

VI. First Appeal accordingly disposed of. In the circumstances there shall be no order as to costs.

VII. Award be drawn up accordingly.

VIII. Pending Civil Applications also disposed of.

(V.K. JADHAV, J.)

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