

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

**FIRST APPEAL STAMP NO. 26602/2016**

SAGAR SUDHIR SHAH  
VERSUS  
NAMDEO GYANOBA BANDE AND ORS

...  
Advocate for Applicant : Mr.Natu Sharad V.  
Advocate for respondent nos. 1 & 2: Mr. Y.R.Marlapalle  
Advocate for respondent no.3: Mr.S.Y.Patil.

...  
**WITH**

**FIRST APPEAL STAMP NO. 28878/2016**

SHIVAJI TUKARAM WALAKATTE  
VERSUS  
NAMDEO GYANOBA BANDE AND ORS

...  
Advocate for Applicant : Mr.Patil Shrikant Y.  
Advocate for respondents: Mr. Y.R.Marlapalle

...  
CORAM : P.R. BORA, J.  
Dated: October 07, 2016

...  
PER COURT :-

1. Issue notice to the respondents. Learned Counsel appearing for respondents in respective matters waive service. Service complete.

2. Since both the Appeals arise out of the common judgment passed by the Commissioner for

Employees Compensation Act and Judge, Labour Court at Latur, in W.C.A.No.29/2014 on 9.5.2016, I have heard the common arguments in the matter and I deem it proper to decide both the appeals by a common reasoning.

3. WCA No.29/2014 was filed by the present respondent nos. 1 and 2 seeking compensation on account of death of their son, namely, Bharat Namdeo Bande alleging that he died during the course of employment with Original respondent no.2, who was the contractor working for original respondent no.1. The application so filed was resisted by the present appellants on various grounds. The liability itself was disputed by both the appellants, however, it appears that the claimant no.1 was not cross examined by the present appellants and no evidence was also adduced by both the appellants.

4. In the present appeals, it is the contention of both the appellants that reasonable opportunities were not provided to them by the Court below for cross examination of the witness examined on behalf of the original claimants

as well as for adducing evidence from their side. It is the contention of appellant Sagar Sudhir Shah that during pendency of the WCA Application before the Employees Compensation Court, the learned Counsel who was representing him, expired and before he could make alternate arrangement, the application was decided by the Court. Learned Counsel submitted that the fact that the Counsel who was appearing for appellant Sagar Sudhir Shah died, was well within the knowledge of the Court below, however, without giving due opportunity to the appellant, for engaging another lawyer, or making some alternate arrangement, appellant's evidence was closed as well as his right to cross examine the claimants witness was curtailed.

5. It is the contention of the another appellant viz. Shivaji Tukaram Walakatte, original respondent no.2, that no opportunity was given to him for cross examining the claimants witness or for adducing his evidence. Taking me through the Roznama, learned Counsel for appellant Shivaji Walkatte submitted that on the given date the

matter was kept for cross examination of the claimants witness by respondent no.1 and unless the witness is cross examined by respondent no.1, respondent no.2 could not have cross examined the said witness. In the circumstances, if the said witness was not cross examined by respondent no.1, the order of 'No Cross' could have been passed only against respondent no.1 and the matter should have been fixed for cross examination of the said witness by respondent no.2. Learned Counsel submitted that no such opportunity was, however, given to respondent no.2. Learned Counsel further submitted that, thereafter, the matter ought to have been posted firstly for adducing evidence by respondent no.1 and, thereafter, for the evidence of respondent no.2, however, no such procedure was followed and the evidence of respondent no.2 was simultaneously closed with respondent no.1. Learned Counsel submitted that no opportunity was thus given to respondent no.2 either for cross examining the claimants witness or for adducing evidence by respondent no.2. Learned Counsel, therefore, prayed for setting aside the impugned judgment

and award and to remit back the matter for its fresh decision by extending the due opportunity to respondent no.2 to cross examine the claimants witness and to adduce evidence, if any, on his behalf.

6. Learned Counsel appearing for original claimants has opposed the submissions made on behalf of the learned Counsel for the appellants. Learned Counsel submitted that the Court below has awarded reasonable opportunities to the parties for cross examining the claimants witness and also for adducing the evidence on their behalf. Learned Counsel further submitted that though, time and again, adjournments were sought by the said respondents, the matter was not proceeded further and, in such circumstances, the learned Court below rightly curtailed the right of the appellants to cross examine the witness examined by the claimants and to adduce evidence on their behalf. Learned Counsel has, therefore, prayed for dismissal of the appeal.

7. I have carefully considered the submissions

made on behalf of the learned Counsel for the appellants in the respective appeals and the Counsel appearing for the respondents in both the aforesaid appeals. I have also perused the impugned judgment and the other material on record. The fact that the learned Counsel, who was representing appellant Sagar Sudhir Shah, expired during pendency of the matter before the trial Court, is not in dispute. From the material on record it does not appear that due opportunity was given to the said appellant for making alternate arrangement. No such opportunity seems to have been given also to another appellant, namely, Shivaji Walkatte. There is substance in the objection raised on behalf of the said appellant that the matter was never fixed for cross examination by respondent no.2 and, thereafter, for adducing evidence on behalf of respondent no.2. Roznama clearly shows that the Court below simultaneously closed the evidence of respondent no.2 also along with respondent no.1. In the aforesaid circumstances, the contention raised on behalf of the appellants has to be accepted that the Court below has decided the matter without giving the appellants due

opportunity of cross examining the claimants witness and for adducing evidence, if any, on their behalf. It is thus evident that the impugned order will have to be set aside and the matter needs to be remitted back to the trial Court for deciding it afresh by giving permission to the appellants to cross examine the claimants witnesses and to further permit them to adduce evidence on their behalf.

8. During the course of arguments it was submitted by the learned Counsel for the original claimants that, in the meanwhile, the original claimants may be permitted to withdraw the amount of compensation as deposited by the appellants. The request so made has been opposed by the appellants. It was contended by learned Counsel for the appellant Sagar Shah that unless the liability is re-fixed on the appellant alone, the amount cannot be permitted to be withdrawn by the original claimants. The appellant Sagar Shah has deposited the amount of Rs.9,00,000/- ( Rs. Nine lacs) while preferring the present appeal.

9. After having considered the entire material on record, it appears to me that it may not be proper to permit the claimants to withdraw the entire amount as has been deposited by the appellant Sagar Shah. At the same time, it would also be wholly unjust to outrightly reject the prayer of the original claimants to permit them to withdraw the amount of compensation. It appears to me that the ends of justice would be met if the original claimants are permitted to withdraw a sum of Rs.4,00,000/- ( Rs. four lacs) from the deposited amount on submitting a solvent surety in the like amount to the satisfaction of the Court, undertaking therein that in the event the Claim Application is rejected or the amount of compensation is reduced, they will repay the amount so withdrawn by them within the time which may be stipulated by the Court.

10. For the reasons recorded above, the following order is passed:

#### ORDER

1. The judgment and Award passed in WCA No.29/2014 on 9th May, 2016, is quashed and set aside.

2. The matter is remitted back to the Commissioner for Employees Compensation at Latur for deciding it afresh with a direction that he shall permit the present appellants i.e. original respondents to cross examine the claimants and claimants witnesses and also permit them to adduce evidence, if any, on their behalf.

3. The original claimants are permitted to withdraw a sum of Rs.4,00,000/- ( Rs. four lacs) out of the compensation amount deposited by appellant Sagar Shah on submitting a solvent surety in the like amount to the satisfaction of the trial Court.

4. The trial Court shall decide the application as expeditiously as possible and preferably within a period of six months from the date of receipt of writ from this Court.

Both the Appeals are allowed in above terms. No order as to costs.

( P.R. BORA, J. )