

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

FIRST APPEAL NO.3463 OF 2015

1. Shree Datta Shetkari Sahakari Sakhar
Karkhana Ltd. At Shirol,
Post. Dattanagar, Tq. Shirol,
District Kolhapur
Through its Chairman

2. Shree Datta Shetkari Sahakari Sakhar
Karkhana Ltd. At Shirol,
Post. Dattanagar, Tq. Shirol,
District Kolhapur
Through its Managing Director

.. Appellants
(Orig. non Applicants
Nos.1 and 2)

Versus

1. Babasaheb s/o Sopan Sanap,
Age 48 years, Occu. Labour & Agri.
R/o. Bhavanwadi,
Tq. And District Beed.

2. Vitthal s/o Babasaheb Sanap
Age 23 years, Occu. Education
R/o. As above.

3. Jalindar Babasaheb Sanap
Age 22 years, Occu. Education
R/o. As above.

(Ori. Claimants)

4. Laxman s/o Satyabhan Khandare
Age major, Occ. Labour contractor
R/o Karegavhan,
Tq. and District Beed.

(Ori. Non applicant No.3)
... Respondents

...

Mr.Umakant U. Wagh, Advocate h/f Mr. A. V. Hon Advocate for
Appellants;

Mr. M.S. Karad, Advocate h/f Mr.S.S.Thombre, Advocate for
Respondent Nos. 1 to 3;

Mr. Abhijit Choudhary, Advocate for Respondent No.4.

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CORAM: P.R.BORA, J.

Date of reserving the judgment : 06th April, 2016

Date of pronouncing the judgment: 13th April, 2016

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JUDGMENT :

. Heard. Admit. With the consent of the learned Counsel appearing for the parties, heard finally.

1) Original non-applicant Nos.1 and 2 in Workmen's Compensation Case No.24/2012 decided on 04.11.2015 by the Commissioner, Employees' Compensation and Civil Judge Senior Division, Beed, have filed the present appeal, taking exception to the Judgment and Award passed therein.

2) The aforesaid claim application was filed by present respondent nos. 1 to 3 (hereinafter referred to as the claimants), claiming compensation on account of death of Ashrabai in an accident, happened on 15.02.2012. It was the contention of the claimants before the Employees' Compensation Commissioner (hereinafter referred to as Commissioner) that, Ashrabai was working as sugarcane cutting labour with the present appellants. It was their further contention that, deceased Ashrabai was engaged as labour with the appellants, through respondent No.4 (original respondent no.3) for the season 2011-12. It was further contention of the claimants that, deceased Ashrabai was getting Rs.8,000/- per month and at the time of her death, her age was 40 years.

3) As averred in the claim petition, the alleged accident happened on 15.02.12, when deceased Ashrabai and the claimants were bringing the sugarcane of one Kallappa Bhojkar to the appellant sugar factory, after the same was cut by them from the sugarcane field of said Kallappa Bhojkar. At the relevant time, the bullock-cart, wherein the sugarcane cut from the Kallappa Bhojkar was loaded, was in queue in the front gate of the appellant sugar factory. Deceased Ashrabai was sitting in bullock-cart. According to the claimants, the accident happened as the bullocks jumped wildly and Ashrabai fell on the ground and the bullock-cart ran over her person, Ashrabai suffered severe injuries and while she was being taken to hospital died on the way to the hospital. The claimants, therefore, claimed the compensation invoking the provisions of the Employee's Compensation Act to the tune of Rs.7,36,680/- and also the amount of penalty.

4) The appellants contested the claim by filing their written statement. The appellants denied the claim in toto. Appellants also denied that, deceased Ashrabai was in their employment or that there was any employer-employee relationship between the appellant sugar factory and deceased Ashrabai. It was also contended by the appellants

that, the death of Ashrabai did not occur because of injuries caused to her in the accident. It was also contended that, the death of Ashrabai had occurred because of her own negligence.

The respondent No.4 herein i.e. Original respondent No.3 had also submitted his written statement, wherein he accepted that, deceased Ashrabai was recruited by him for the work of cutting sugarcane registered with the appellant sugar factory. In order to substantiate the contentions raised in the claim petition, the respondent no.1 namely; Babasaheb deposed before the Commissioner. The appellant sugar factory had also examined one witness by name Suresh who was working as Supervisor at the relevant time in the appellant sugar factory. The respondent No.3 had also deposed before the Commissioner. The learned Commissioner on assessment of the oral and documentary evidence brought before him, allowed the petition in part. The learned Commissioner Awarded the compensation of Rs. 7,36,680/- to the claimants jointly and severally from respondent nos. 1 and 2 i.e. Present appellant nos. 1 and 2 along with the simple interest at the rate of 12% per annum from the date of filing of the application till its realization. The Commissioner also awarded the sum of Rs.3,68,340/- towards the amount of penalty to the claimants jointly and

severally from respondent nos. 1 and 2. Aggrieved thereby, the employer sugar factory has filed the present appeal.

5) Mr. Umakant Wagh, the learned Counsel for the appellants assailed the impugned Judgment and Award on several grounds. Learned Counsel submitted that, though the claimants have failed in proving the employer-employee relationship between sugar factory and deceased Ashrabai, the learned Commissioner has saddled the appellants with the liability of paying compensation to the claimants. It was further contended that, wages of deceased Ashrabai have also not been proved by the claimants. According to the learned Counsel, except the oral statement of PW-1 Babasaheb, there was no evidence before the Commissioner as about the income of deceased Ashrabai. Learned Counsel further argued that, before imposing the liability of penalty and directing the appellants to pay the amount of penalty to the claimants, the learned Commissioner has not issued any notice as mandated under section 4-A of the Employee's Compensation Act and as such, the order of imposing penalty is liable to be quashed and set aside. Learned Counsel submitted that, without there being any sufficient evidence as about the employee-employer relationship between deceased Ashrabai and appellant sugar factory and

as about the income of deceased Ashrabai, the learned Commissioner has arbitrarily passed an Award fastening the liability of the huge amount on the appellant sugar factory. The learned Counsel, therefore, prayed for setting aside the impugned judgment and Award.

6) Mr. M.S.Karad, the learned Counsel appearing for claimants supported the impugned judgment and Award. Learned Counsel submitted that, deceased Ashrabai was recruited as a labour for sugarcane crop cutting for the appellant sugar factory for the season 2011-12 by the labour contractor Viz: Laxman Khandare (respondent No.2 in the present appeal). Learned Counsel further submitted that, while the sugarcane was being carried to the sugar factory, after the same was cut from the field of Kallapa Bhojraj, the alleged accident happened and Ashrabai suffered the death because of the injuries caused to her in the said accident. According to the learned Counsel, thus alleged accident happened during the course and out of the employment of the deceased Ashrabai with the appellant sugar factory. Learned Counsel further submitted that, respondent No.4 Laxman Khandare was the approved labour contractor, through whom deceased Ashrabai was employed for the purpose of sugarcane cutting. According to the learned

Counsel, appellant sugar factory was thus the principal employer of deceased Ashrabai, and in such circumstances, was liable to pay the amount of compensation to the legal representatives of deceased Ashrabai i.e. Claimants. Learned Counsel further submitted that, the claimants have satisfactorily proved that deceased Ashrabai was working for the appellant sugar factory through the labour contractor. Learned Counsel further submitted that, the wages being earned by deceased Ashrabai and her age at the time of her death have also been correctly proved by the claimants. According to the learned Counsel since the appellant sugar factory did not deposit the amount of compensation despite issuance of notice the appellant sugar factor before filing the claim petition, the learned Commissioner has rightly imposed the penalty on the appellants. Learned Counsel, therefore, prayed for dismissal of the appeal.

7) I have carefully considered the submissions advanced on behalf of the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the evidence, oral as well as documentary adduced before the learned Commissioner. On perusal of the evidence on record, apparently there appears no substance in the argument advanced on behalf of the

appellants that, the claimant have not established the employer-employee relationship between deceased Ashrabai and appellant sugar factory. In para 18 of the judgment, the learned Commissioner has elaborately discussed the evidence on this point. It has come on record that, in the bullock-cart involved in the alleged accident, the sugarcane which was cut from the sugarcane field of Kallappa Bhojkar was loaded. There was a weight slip issued by the appellant sugar factory in the name of said Kallappa Bhojkar of the date 15.02.2012. In the said weight slip the name of claimant No.1 Babasaheb is shown as cart owner cum labour and the name of Laxman Khandare as *Mukadam*. Labour contractor Laxan Khandare has admitted that deceased Ashrabai was recruited by him for the purpose of cutting of sugarcane crop for the appellant sugar factory. The appellant sugar factory has not denied or disputed that, Laxman was their labour contractor for the season 2011-12 and through him the appellant sugar factor had recruited the labours for sugarcane cutting. The evidence which has come on record as above, sufficiently proves that, the appellant sugar factory was the principal employer of deceased Ashrabai and that, the alleged accident resulting in her death occurred during the course and out of her employment with the appellant sugar factory. I do not find any error in the

findings recorded by the learned Commissioner in this regard.

8) About the income of deceased Ashrabai, original claimant no.1 in his evidence before the Court has deposed that, deceased Ashrabai was getting the wages at the rate Rs.8,000/- per month. Though the appellants disputed the said income, did not bring on record any evidence to show the probable income of the labour like deceased Ashrabai. In para 24 of the judgment, the learned Commissioner has observed that, though the appellant sugar factory examined the witness by name Suresh, the said witness in his evidence before the Court expressed his inability to state even approximate rates of harvesting and transporting the sugarcane. The learned Tribunal has further observed that, the said witness was asked to state at least minimum charges which were being paid to the labourers lie deceased Ashrabai, however, the said witness could not even state the said charges. In absence of any contrary evidence on record, the Tribunal held the income of deceased Ashrabai to the tune of Rs.8,000/- per month as per the limit of monthly income as provided under section 4 of the Employee's Compensation Act. It does not appear to me that, the tribunal has committed any error in arriving at the

said conclusion.

9) However, there appears substance in the objection raised by the appellant sugar factory about imposing of the penalty by the learned Commissioner. Before imposing penalty amount, the learned Commissioner did not seem to have issued the notice to the appellant sugar factory as required under section 4-A of the Employee's Compensation Act. It was sought to be canvased by the learned Counsel appearing for the claimants that, before filing of the claim petition, the claimants have issued notice to the appellant sugar factory and since the appellant sugar factory failed in depositing the amount of compensation, within the stipulated period, was liable for the penalty also. The argument advanced as such, cannot be accepted. Issuance of notice before filing of the claim petition is altogether different. There is a specific provision as regards the imposition of penalty. Proviso of sub clause (b) of sub section 3 of Section 4-A provides that, an order for the payment of penalty shall not be passed under clause (b) without giving reasonable opportunity to the employer to show cause why it should not be passed. Admittedly, the Commissioner has not issued any such notice. In the circumstances, the impugned order in so far

as it relates to imposing of penalty cannot be sustained and deserves to be quashed and set aside. In the result, the following order:

ORDER

- a) The appeal is partly allowed.
- b) The order imposing penalty to the tune of Rs. 3,68,340/- on the appellants is quashed and set aside. Remaining part of the award shall remain unchanged.
- c) Pending Civil Application shall stands disposed of.

(P.R.Bora)
Judge

SPR