

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL NO. 1474 OF 2012

Rajendra Prasad s/o Ramgut	... Appellant
V/s.	
Mr. Dinesh Pandey	... Respondent

Mr. P. M. Mokashi for the appellant.
Mr. Dilip Shukla for the respondent.

**CORAM : K. K. TATED, J.
DATED : 04/01/2016**

PC.:

. Heard learned Counsel for the parties.

2 This Court by order dated 19.11.2012 issued notice to the Respondent indicating that the Appeal may be decided finally at the stage of admission itself. Thereafter, the learned Counsel for the Appellant filed additional compilation of documents including claim application, written statement, notes of evidence. R & P was also received from the Trial Court.

3 This appeal is preferred by claimant challenging the Judgment and Award dated 27.07.2012 passed by the Commissioner for Workmen's Compensation, Fourth Labour Court, Thane in Application (WCA) No. 258/C-54/2009 rejecting Appellants' claim petition.

4 The few facts of the matter are as under:

a) It was the case of the Appellant that he was employed at

the Respondent's establishment since 1997. He was working on flush door cutting machine installed by the Respondent at the premises located at Azad Nagar, Kashimira Road, Bhayendar, District Thane. It was the case of the Appellant that on each saw machine/flush door cutting machine a set of two workers were required to operate so that the wooden logs can be cut specifically to size so as to be utilised for the purpose of sale to be put to the end use of construction of flush door etc. He used to earn Rs.25/- per piece to cut to size from the uneven wooden log. In this way, he used to earn near about Rs.250/- per day.

b) On 28.01.2009, when the Appellant was working on saw machine/flush door cutting machine at around 1.00 p.m. he accidentally got injured on the said machine owned by the Respondent and thus the Appellant suffered an injury whereby his entire half palm including 4th and 5th finger of the left hand palm were cut off due to working on the saw machine/flush door cutting machine. He was admitted in Ashwini Hospital for total period of 5 days from 28.01.2009 to 02.02.2009.

c) Thereafter, the Appellant called upon the Respondent to pay compensation. As the Respondent failed and neglected to pay compensation, the Appellant issued legal notices dated 05.03.2009, 13.04.2009 and 27.04.2009 by R.P.A.D. and certificate of posting. In spite of all legal notices, as the Respondent failed to pay the compensation of Rs.4,99,152/-, the Appellant filed application under Workmen Compensation Act bearing Application (WCA) No. 258/C-54/2009 before the Commissioner for Workmen's Compensation, Fourth Labour Court, Thane. In that application, the Respondent filed

his written statement dated 27.08.2010 and denied his liability. The Respondent in his written statement denied the relationship of employer-employee between the Appellant and Respondent. Apart from that the Respondent in his written statement stated that the Appellant never worked in his establishment. The Respondent in his written statement stated that he himself pleased to operate the machine with the help of his nephew Mr. Sunil Pandey as per requirement. Therefore, there is no question of any relationship of employer- employee between the Appellant and Respondent.

d) The Appellant in support of his contentions filed affidavit of evidence dated 15.01.2011, affidavit of one Mr. Mahendra Ramgut (Exh.U-13) and examined Mr. Nitin Prabhakar Ahirrao, General Physician & Medical practitioner (Exh. U-15). In similar way Respondent filed his Affidavit-in-lieu-of-evidence dated 07.04.2012, Affidavit of Mr. Sunil Keshavprasad Pandey (witness No.2) dated 04.07.2012 and Affidavit of Ashok Komal Yadav (witness No.3) dated 13.06.2012.

e) Considering the evidence on record the Trial Court rejected the Appellant's application for compensation. Hence, the present First Appeal under Section 30 of Employees Compensation Act, 1923 (hereinafter will be referred as 'the said Act').

5 The learned Counsel Mr. P. M. Mokashi appearing on behalf of Appellant claimant submits that the Court below erred in coming to the conclusion that Appellant failed to prove the relationship of employer-employee between the Appellant and Respondent and therefore, the Appellant is not entitled to any compensation. He submits that the

appellant was working with the Respondent for last several years. He used to get wages on the basis of job work. He used to earn near about Rs.250/- per day. He submits that the Court below without giving any reasons discarded evidence of Appellant's witness Mr. Mahendra and Surinder only on the ground that their affidavit-of-evidence was not prepared as per their instructions. He further submits that even the Trial Court failed to consider deposition of Mr. Nitin Ahirrao, General Physician and Medical Practitioner, who was specifically stated that Dr. Milind Survade, who signed the discharge card of the Appellant was working in Ashwini Hospital. He identified the signature of Dr. Milind Survade on discharge card. In spite of this fact, the Trial Court erred in coming to the conclusion that the Appellant failed to prove the accident and injury sustained by the Appellant in the course of employment.

6 The learned Counsel for the Appellant submits that the Trial Court failed to appreciate that Respondent and his witnesses in cross-examination admitted that the Respondent was dealing in flush door cutting and for that purpose he had installed the cutting machine. He further submits that in the cross-examination, the Respondent and his witnesses failed to deny their liability. Hence, the Trial Court on the basis of cross-examinations of Respondent and his witnesses, ought to have held that the Appellant proved his case for compensation.

7 In support of his contentions the learned Counsel for the Appellant relied on Judgment of the Apex Court in the matter of ***Gulzar Ali V/s. State of H.P. reported in (1998) 2 Supreme Court Cases 192*** and Judgment of the High Court of Andhra Pradesh in the

matter of *Nanu V/s. Ghouse Mohinuddin & Anr. reported in 2004 III CLR 1016.*

8 The learned Counsel for the Appellant submits that bare reading of the impugned Judgment shows that the Trial Court failed to consider the evidence on record and erred in coming to the conclusion that Appellant failed to prove the employer-employee relationship as well as the accident occurred in Respondent's establishment. Hence, Judgment and Award passed by the Trial Court is required to be set aside directing the Respondent to pay a sum of Rs.4,99,152/- with interest thereon @ 21% per annum.

9 On the other hand, the learned Counsel Mr. Dilip Shukla appearing on behalf of Respondent vehemently opposed the present Appeal. He submits that the Respondent never employed the Appellant in his establishment. He submits that the Respondent was doing the business on small scale only. He used to do his own work with the help of his nephew Mr. Sunil Pandey. He further submits that the Appellant has not placed on record any documentary evidence to show that he was employed with the Respondent at any time. He further submits that the Trial Court rightly discarded the evidence of Surendra Ramgut (Exh.U-14) and Mahendra Ramgut (Exh. U-13) on the ground that both of them were the elder brothers of the Appellant. He further submits that though the Appellant specifically stated in the deposition that they were in all 5 to 6 workers working with him, he failed to examine any independent co-worker in support of his case. He further submits that on the date of accident, the Respondent was out of town.

Not only that, his establishment was also closed during that period. Hence, there is no question of imposing the liability of payment of compensation on the Respondent. He submits that there is no substantial question of law involved in the present First Appeal. Hence, same is required to be dismissed with cost.

10 I heard both the sides at length. I have gone through the record and proceeding of the Trial Court. As per contention of the Appellant, the following questions of law involved in the present First Appeal.

Questions:

A) Whether the Appellant proved the employer-employee relationship with the Respondent?

B) Whether the Appellant sustained any injury in Respondent's establishment?

Answers:

A) No.

B) No.

11 In the present proceeding, admittedly, the Appellant has not examined any co-worker, who was working with him on the date of accident. It was specifically case of the Appellant that on the date of accident, some other 3 to 4 persons were working on flush machine. In spite of that, instead of examining independent co-worker, the Appellant filed affidavit of his elder brothers Mahendra Ramgut (Exh.U-13) and Surendra Ramgut, (Exh. U-14). Therefore, the Trial Court rightly discarded the evidence of both the witnesses. Though, it

was specifically case of the Appellant that he was admitted in Ashwini Hospital for more than 5 days and he was treated by orthopedic surgeon Dr. Milind Survade. Instead of examining Dr. Milind Survade, the Appellant examined Mr. Nitin Ahirrao, General physician and Medical Practitioner. He only stated in his deposition that he knows Dr. Milind Survade and he can identify his signature on the basis of discharge card issued by Ashwinin Hospital, which was marked as Exhibit in the proceeding. Neither Appellant nor Mr. Nitin Ahirrao stated in his deposition that orthopedic surgeon Dr. Milind Survade was not available for examination. Therefore, the Trial Court rightly discarded the Appellant's case that he was sustained injury during the employment at the establishment of the Respondent. Therefore, he was entitled for compensation.

12 It is to be noted that the Respondent's witness Dinesh Hanuman Prasad Pandey (Exh. C-6) specifically stated that he never saw the Appellant working with the respondent. He further stated that on the date of accident, the establishment of respondent was closed. In similar way the Respondent's witness Sunil Keshavprasad Pandey (Exh.C-9) stated that he used to help Respondent in his business. Therefore, no other employee was employed by the Respondent during the year 2009. These facts really shows that neither the Appellant proved any relationship of employer-employee with the Respondent, nor proved the fact that the accident occurred during the course of the employment with the Respondent.

13 The authority cited by the Appellant in the matter of Gulzar Ali (supra) and Nanu (supra) are not applicable to the facts and

circumstances of the present case.

14 Considering the above mentioned fact, documents and evidence on record, I am of the opinion that the Appellant failed to prove any relationship of employer-employee as well as accident occurred in the establishment of the Respondent. Hence, the First Appeal preferred by the Appellant deserve to be rejected.

15 First Appeal stands rejected. No order as to costs.

(K.K.TATED, J.)