

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**FIRST APPEAL NO.1330 OF 2016
WITH
CIVIL APPLICATION NO.2507 OF 2014**

1. M.S.E.D.C.L. Through its Superintending Engineer, Nava Mondha, Nanded,
2. M.S.E.D.C.L. Through its Executive Engineer, Rural Area, Vasant Nagar, Opp. Shahu Vidyalaya, Nanded. .. **APPELLANTS**
(Ori.Resp.Nos.1 and 2)

VERSUS

1. Puranbai @ Shantabai Govind Julewad
Age : 36 years, Occu.: Household
R/o Mugat, Tq. Mudkhed, Dist. Nanded
2. Avinash s/o Govind Julewad
Age : 14 years, Occu.: Education
U/G of his natural mother, Resp. No.1.
3. Ankush s/o Govind Julewad
Age : 6 years, Occu.: Education
U/G of his natural mother, Respo. No.1.

..Orig. Claimants.

4. Suresh Shelke
Age : 37 years, Occu.: Jr. Engineer,
M.S.E.D.C.L. R/o Mudkhed,
Dist. Nanded.

**....RESPONDENTS.
(Ori.Claimants & Resp.No.3)**

Mr. Dhananjay Deshpande, Advocate for Appellants;
Mr. Mukund P.Ambekar, Adv. for Respondent Nos.1 to 3;
Mr. Avishkar S.Shelke, Adv. For Resp.No.4(Absent)

CORAM : P.R.BORA, J.**RESERVED ON : 29th June, 2017****PRONOUNCED ON:29th August, 2017****JUDGMENT:**

1) Appellants have filed the present appeal against the judgment and award dated 9th December, 2013 passed in WCA No.29/2008 decided by the Workmen's Compensation Commissioner, at Nanded.

2) Respondent Nos.1 to 3 had filed the aforesaid application, seeking compensation under the provisions of the Workmen's Compensation Act, (for short, the said Act) on account of death of Govind Julewad, alleging the same to have been caused during the course of his employment with Maharashtra State Electricity Distribution Company Ltd. (for short, MSEDCL) i.e. present appellant. It was the contention of Respondent Nos. 1 to 3, who are hereinafter referred to as claimants, that while removing the cement electric pole from the field of one Dhaknikar for installing the same in the field of Ramchandra

Sambhod, the said pole fell on the person of Govind and in the accident so happened, he died on the spot. It was the further contention of the claimants that he was carrying out the work of removing the pole on instructions of one Suresh Shelke (original Respondent No.3), who is Respondent No.4, in the present appeal, working as Junior Engineer in MSEDCL.

3) The application was resisted by the appellants. The appellants had denied that deceased Govind was their employee or that he was in any way working for them. It was, therefore, the contention of the appellants that the application filed under the provisions of the Workmen's Compensation Act, was not maintainable. It was specifically contended by the appellants that deceased Govind was not working as a workman of either present appellants (original Respondent Nos. 1 and 2) or Respondent No.3 (present Respondent No.4). It was submitted that since the MSEDCL has its own work force, there was no

necessity for engaging any private worker nor it was a practice to appoint anybody as a labour for doing the MSEDCL work. It was also contended that Ramchandra Sambhod had privately assigned the said to Jankiram and deceased Govind and while carrying out the said work at their instructions, the accident happened.

4) The learned Workmen's Commissioner, after having assessed the oral as well as documentary evidence brought on record before him, held the claimants entitled for the compensation of Rs. 3,11,970/- with interest thereon @ 12% p.a. from the date of the accident till its realization jointly and severally from the present appellants. Aggrieved by, the present appeal has been filed by the appellants.

5) Shri Dhananjay Deshpande, learned Counsel appearing for the appellants, assailed the impugned judgment and award on various grounds. The learned counsel submitted that

though it was the specific defence raised by the appellants that deceased Govind was not their employee and was not working for them and though the claimants did not bring on record any cogent and sufficient evidence to show that deceased Govind was in the employment of the appellants and the alleged work was assigned to him by the appellants, the Commissioner has erroneously held the appellants liable to pay the amount of compensation to the claimants holding that deceased Govind suffered the death while performing the work of the appellants. The learned Counsel further submitted that the Commissioner has failed in appreciating that except the oral version of claimant No.1 that one Suresh Shelke was allotting the work of MSEDCL to deceased Govind and used to take him for such work since last 2-3 years, there was no other corroborative evidence to support the said version of claimant No.1. The learned Counsel further submitted that it is improbable that any Junior Engineer of MSEDCL will make the payment

from his own pocket that too for years together. The learned counsel submitted that when it was the case of the claimants that since last 2-3 years he was regularly working with MSEDCL as a casual worker, it was possible for them to call for the necessary record so as to prove that deceased Govind was being paid the wages from MSEDCL for the daily work, which he used to perform. The learned Counsel submitted that had there been any such evidence, it would have been said that there was some justification for the Commissioner to hold that deceased Govind died while performing the work of the appellants. However, when the claimants did not bring on record any such evidence, the Commissioner must have rejected the application filed by the claimants. The learned Counsel, therefore, prayed for setting aside the impugned judgment and award and consequently to dismiss the application against the appellants.

6) Shri Ambekar, learned Counsel appearing

for the claimants, supported the impugned judgment and award. The learned Counsel submitted that the evidence on record was sufficient to hold the claimants entitled for the compensation under the provisions of the Workmen's Compensation Act. The learned Counsel submitted that the claimants have fully established that deceased Govind suffered the death while carrying out the work connected with the activities of the appellants. The learned counsel further submitted that since no substantial question of law is involved, the appeal, as has been filed by the appellants, is not maintainable. He, therefore, prayed for dismissal of the appeal.

7) I have carefully considered the submissions made on behalf of the appellants as well as the respondents. I have also perused the impugned judgment and award and the evidence on record. From the material on record, it is not in dispute that deceased Govind when was removing

the M.S.E.D.C.L's cement electric pole from the field of Narayan Dhaknikar for installing the same in the field of Ramchandra Sambhod along with one Jankiram, the said pole fell on him and in the accident so happened, he suffered the death on the spot. According to the claimants, deceased Govind was carrying out the work of removal and installation of the pole on instructions of Suresh Tukaram Shelke, Junior Engineer of MSEDCL. As against it, as has been deposed by Suresh Tukaram Shelke in his evidence affidavit at Exh.C-5, one Ramchandra Gangaram Sambhod has privately allotted the said work of installing the cement electric pole in his field to Jankiram and deceased Govind and while carrying out the said work, deceased Govind suffered the death in the field of Narayanrao Dhaknikar. It was, therefore, the further contention of said Tukaram Shelke that death of Govind cannot be said to have been caused while performing the work for MSEDCL.

8) Shri Shelke, in his cross-examination has stated that, the Distribution Company never used to engage any outside labour for the work of erection of pole, meaning thereby that such work has to be necessarily carried out only by the workers employed by Distribution Company and by none else. It is the case of the appellants themselves that Ramchandra Sambhod, on his own, has privately engaged Jankiram and deceased Govind to carry out the work of installation of cement electric pole in his field. It is thus evident that according to the case of the MSEDCL, Ramchandra Sambhod was illegally getting the said work done by said Jankiram and deceased Govind. There is no dispute that cement electric pole or the electric wires/cables to be laid from the said pole, were the properties of MSEDCL. As noted above, the work of installation of electric pole has to be exclusively done by MSEDCL itself and cannot be allotted to any private person or agency.

9) The question arises when such was the defence of the appellants, what action did they take against Ramchandra Sambhod or Narayan Dhaknikar for privately carrying out the said work and for illegally and unauthorisedly dealing with the property of MSEDCL.

10) Suresh Shelke in his cross-examination has candidly admitted that MSEDCL did not file any complaint against Narayan for his unauthorized work of shifting the pole. It was further stated by Shri Shelke in his cross-examination that he had reported about the unauthorized work of Narayan to his superior. However, said Shelke did not file on record a copy of the said communication made by him with his superior, though he has stated that he can file it on record. It has to be further stated that during the course of hearing of the application before the learned Commissioner, nothing was brought on record by the appellants to show that any such action was taken by them

against either Narayan Dhaknikar or Ramchandra Sambhod or Jankiram. In the present appeal also, no such document has been placed on record or no such information is provided to substantiate the contention raised by Suresh Shelke in his evidence before the trial court that he has reported the matter to his superior officer for the unauthorized work carried out by Narayan. In absence of any such evidence, adverse inference was liable to be drawn against M.S.E.D.C.L. It has utterly failed in substantiating the plea raised by it that the alleged work was being done by deceased Govind as a private employee engaged by Ramchandra Sambhod and not on instructions of officer of MSEDCL. It has to be, therefore, presumed that the work, which deceased Govind was carrying out, when the alleged accident happened, was being done by him on instructions of the officers of MSEDCL and in connection with the business of MSEDCL.

11) The learned Tribunal has recorded such

conclusion by raising such presumption in favour of the claimants. It does not appear to me that the learned Commissioner has committed any error in drawing such presumption and recording such finding. Moreover, the fact, as has been deposed by Suresh Shelke in Para 9 of his evidence affidavit that Ramchandra Sambhod in his statement recorded on 3rd March, 2008 (Exh. C-13), has stated that, he has allotted the work of installation of cement electric pole to his two private servants, viz. Jankiram and Govind, also cannot be accepted. I have carefully read the statement of Ramchandra Sambhod at Exh. C-13, which discloses that when he had been to the office of MSEDCL at Nanded, one Shri Choudhari had provided him the electric line wire and the allied material for installation of electric connection in his field and the same, was stored by him at his house. Said Ramchandra has further stated that in January 2008, when he had been to the unit office at Mudkhed and had met the lineman, Shri Gurutwad, he had promised him to do

his work within next few days. Ramchandra has further deposed that thereafter on 26th February, 2008, Jankiram, Govind and Gurutwad came to his field and told him that the work of installation of pole is to be carried out and thereafter the alleged accident had happened. Gurutwad is admittedly a lineman in MSEDCL at their Mudkhed unit. Copy of the statement dated 3rd March, 2008 has been filed by the appellants themselves and the same has been attested also by the officer of the MSEDCL and, therefore, the same has been marked as Exh.C-13. It is not the case of the appellants that the fact stated by Ramchandra Sambhod that on 26th February, 2008, lineman Gurutwad also had been to his field along with Jankiram and Govind, is false or incorrect. When the statement at Exh. C-13 is relied upon by the appellants, i.e. original respondents; the same has to be read as a whole. From the said statement it can be reasonably inferred that Jankiram and deceased Govind were asked to carry out the work by said lineman Gurutwad.

12) After having considered the facts, as aforesaid, It does not appear to me that, the Tribunal has committed any error in holding the death of deceased Govind to have been caused while performing the work of MSEDCL. In the circumstances, even if there is no evidence from the side of the claimants to show or to prove direct relationship of deceased Govind with the principal employer as their workman or employee, when from the evidence on record it has been sufficiently proved that deceased Govind suffered the death during the course of the performance of work or duties for MSEDCL, the MSEDCL cannot escape from its liability to pay the compensation to the legal heirs of deceased Govind for his accidental death.

13) In the matters of workmen compensation what is of paramount importance is whether the person is engaged for the purposes of the trade or business of the principal employer. Such a person can even be a casual employee alike deceased Govind. As earlier stated, if the

accident occurs while such person is engaged for the service of the principal employer or when he is occupied in the performance of the work of the principal employer, it has to be held that the accident has occurred during the course of the employment and the principal employer is liable to pay compensation to the legal heirs of the deceased.

14) For the reasons stated above, I do not see any reason for causing interference in the impugned judgment and award. The appeal being devoid of any substance, deserves to be dismissed and is accordingly dismissed, however, without any order as to costs. Pending civil application, if any, stands disposed of.

15) The amount deposited by the appellants, if any, be released in favour of the original claimants after expiry of the period of eight weeks.

(P . R . BORA)
JUDGE

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fldr 28.8.17