

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

**FIRST APPEAL NO. 2485 OF 2017**

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION  
COMPANY LTD. OFFICE AT LATUR AND OTHERS.

VERSUS

SHANKAR SHIVAJI MALI (KHADEBADE) AND OTHERS

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Advocate for Appellants : Mr S V Mundhe

Advocate for Respondents : Mr S.S. Deshmukh for

Respondent No.1, Mr Reddy Ajinkya For R/2.

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**CORAM : V.K. JADHAV, J.**

**Dated: July 31, 2017**

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**PER COURT :-**

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Commissioner for Workmen's Compensation Act and Judge, Labour Court, Latur dated 1.4.2014 in WCA No.129/2011, the original respondent nos. 1 to 3/principal employer preferred this appeal.
3. Brief facts, giving rise to the present appeal are as follows :-

a] On 1.7.2007, the applicant was appointed as an Sub-Division Operator at the Power Supply Sub-Station of present appellants situated at village Chikurda Tq and District Latur. The applicant was in fact appointed by the original respondent No.4-co-operative society who provides services of skilled persons to appellants. The applicant was getting monthly wages of Rs.5,000/-. On 7.6.2010 the applicant was on duty at Sub-Station, Chikurda and at that time he got electric shock and sustained burn injuries to the extent of 47%. He was admitted in the hospital from period of 7.6.2010 to 11.8.2010 as indoor patient. He has also incurred medical expenses to the tune of Rs.3,83,000/-. Due to the aforesaid injuries, he is unable to do work and sustained total loss including medical expenses. The applicant has therefore approached the Commissioner for Workmen's Compensation by filing WCA No.129/2011 for grant of compensation of Rs.9,81,200/- with interest.

b] The appellants/original respondent nos. 1 to 3

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have strongly resisted the claim petition by filing written statement. They have denied the employer-employee relationship. It has been contended that respondent no.4 is a co-operative society, who provides skilled persons to the appellants for working on their establishment and as such, those persons are appointed by respondent no.4. The appellants/original respondent nos.1 to 3 are therefore not liable to pay the compensation. It has also been contended that, there was a contract in between the appellants and respondent no.4 for providing such skilled workers and the supervision on work of those persons was of respondent no.4 society.

c] Respondent no.4-Co-operative Society has also resisted the claim petition by filing written statement. It has been contended that, respondent no.4 was paying Rs.3,000/- p.m. as monthly salary to the applicant, who was working with the appellants on apprenticeship basis. It has also been contended that, respondent no.4 has incurred expenses of Rs.1,50,000/- for medical

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treatment of the applicant and thus respondent no.4 is not liable to pay the compensation.

d] Respondent No.5 Insurer has also resisted the claim petition by filing written statement. It has been contended that, the policy on record is a policy for Janata Personal Accident Policy (Group Policy) and such policy obtained by respondent No.4 covers the risk of Rs.1,00,000/- in case of death and liability of permanent disablement, as detailed in the policy to the extent of Rs.50,000/- and the insurance policy does not cover the risk of the workers under the provisions of Employees' Compensation Act 1923, and, therefore, respondent no.5 is not liable to pay the compensation.

e] The applicant has adduced oral and documentary evidence in support of his contentions. The appellants have not adduced any oral evidence. Respondent No.4 Co-operative Society has examined witness no.4 Jitendra Swami. Learned Commissioner for Workmen's Compensation Act and Labour Judge, Labour Court,

Latur in its impugned judgment and award dated 1.4.2014 partly allowed the application and thereby directed respondent nos. 1 to 4 to pay jointly and severally an amount of compensation of Rs.5,250/- and amount of medical expenses to the tune of Rs.3,21,842/- within two months from the date of this order with interest @ 12% p.a on the amount of compensation of Rs.5,250/- from the date of expiry of one month from the date of accident till realization of the full amount. Claim as against respondent no.5 insurer was dismissed. Hence this appeal.

4. The learned counsel for the appellants submits that, there is no employer-employee relationship between the appellants and the original applicant. The applicant was appointed by respondent no.4 Co-operative Society and under its supervision he was performing his duties. Learned counsel submits that, though, the applicant had sustained burn injuries to the extent of 47% as stated in the medico-legal certificate, except the scars of the burn injuries on his

person, the applicant has not sustained any permanent disablement. There is no loss in his earning capacity and as such, in terms of the provisions of Section 4(1) (d) and Sub-section (2) the Commissioner has considered the temporary disablement sustained by the applicant and accordingly awarded half monthly payment as referred in clause (d) of Sub-section (1) in terms of the provisions of Sub-section 2 of Section 4 of the Employees Compensation Act, 1923 (hereinafter referred to as the 'Act of 1923'). Learned counsel submits that, in any case, the appellants-original respondent nos. 1 to 3 are not liable to pay the compensation. In the alternate learned counsel submits that, if the appellants are held to be liable to pay the compensation as the Principal Employer in terms of provisions of Section 12 of the Act of 1923, then, in terms of provisions of Sub-section 2 of Section 12 Act of 1923, the appellants are entitled to be indemnified by the contractor i.e. respondent no.4 in the instant case. However, the learned Commissioner has not passed any such order even though the learned Commissioner held

liable the appellants to pay the compensation in terms of the provisions of Section 12 of the Act of 1923.

5. Learned counsel for respondent-original applicant submits that, the appellants themselves have admitted in their written statement that in terms of the contract entered between the appellants and respondent no.4 Co-operative Society, the applicant was working on their establishment. Respondent no.4 Cooperative Society has also not disputed the same. The learned Commissioner has, therefore, rightly held the respondents including the appellants to pay jointly and severally compensation in terms with the provisions of Section 12 of the Act of 1923. The appellants themselves admitted their status as Principal Employer and that respondent no.4 under the contract was providing the appellants skilled workers for their establishment. So far as the quantum of the compensation is concerned, the learned counsel submits that the learned Commissioner has not awarded the compensation to the applicant in terms of

the provisions of Section 4 of the Act, 1923. The applicant had sustained burn injuries to the extent of 47% and as such he suffered permanent partial disablement resulted from the injury. Learned Commissioner ought to have calculated the compensation on the basis of percentage of the said disablement in terms of the provisions of Section 4 (1) (c) of the Act of 1923. Learned counsel submits that, even if, it is assumed that the applicant's case falls under clause (1) of section 4 of the Act of 1923, the Commissioner has not calculated the compensation in terms of the provisions of Sub-section (2) of Section 4 of the Act of 1923. Learned counsel submits that, as per the contract between the appellants and respondent no.4 Co-operative society, the rate is fixed Per Shift, Per Person, Per Month and in terms of the said contract, the applicant was entitled for an amount of Rs.5,550/- per month wages. The learned Commissioner has not considered the terms of the contract and given weightage to the admissions given by the applicant to the effect that he was getting Rs.3,000/- p.m. as salary.

Learned counsel submits that, neither the appellants nor respondent no.4 Co-operative society can deny the rate in terms of the contract entered by them and as such, the applicant is entitled for the compensation by considering his wages at Rs.5,550/- p.m. and not otherwise. Learned counsel submits that, the applicant is also entitled for the penalty in terms of the provisions of Section 4-A of the Act of 1923 since the appellants and respondent no.4 are in default in paying the compensation due under the Act within one month from the date it fell due. However, the learned Commissioner has not imposed penalty. Learned counsel in order to substantiate his contentions placed his reliance on the judgment in case of **Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Kumbhar and others reported in (2015) 4 Supreme Court Cases 237** and submits that it is obligatory on the part of the courts/tribunals to award just and reasonable compensation even though the claimants have not filed any appeal.

6. I have also heard learned counsel appearing for respondent No.4 Co-operative Society.

7. On careful perusal of the pleadings and the judgment and award passed by the Commissioner, it appears that, the Commissioner has rightly calculated the compensation in terms of the provisions of Section 4 (1)(d) and sub-section (2) of the Act of 1923. Admittedly, the applicant has not sustained any scheduled injury as specified in Schedule I part I of the Act of 1923. The applicant has also not sustained any injury specified in Part II of Schedule I so as to consider the percentage of total disablement as specified being the percentage of loss of earning capacity. It thus appears that, the Commissioner left with no other choice but to consider the case of the applicant in terms of the provisions of Clause (d) of Section 4 Sub-section (1) of the Act of 1923.

Section 4 Sub-section (1) Clause (d) and Sub-section (2) which are relevant for the present discussion is reproduced herein below :-

**4. Amount of compensation :-** (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

|                                                                                     |                                                                                                                                                                            |
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| (d) where temporary disablement, whether total or partial, results from the injury. | a half-monthly payment of the sum equivalent to twenty-five per cent. Of Monthly wages of the [employee], to be paid in accordance with the provisions of sub-section (2). |
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(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day-

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter :

Provided that\_

(a) there shall be deducted from any lump sum or half-monthly payments to which the [employee] is entitled the amount of any payment or allowance which the [employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and,

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the [employee] before the accident exceeds half the amount of such wages which he is earning after the accident.

*Explanation.* **Any payment or allowance which the [employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.**

8. It appears that the contract entered into between the parties is not placed on record to point out the rate per Shift, per Person, per month and as such, the Commissioner has rightly considered the admission given by the applicant that he was getting Rs.3,000/- p.m. as wages. Learned counsel appearing for the applicant though shown me confirmatory order, however, it appears from the judgment and award passed by the Commissioner that said document was not placed before the Commissioner. Though, the applicant has tried to convince the Commissioner that respondent No.4 Co-operative Society agreed to pay monthly wages of Rs.5,000/-, failed to substantiate the

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same and on the other hand accepted that he was being paid Rs.3,000/-p.m. As wages.

9. I do not find any substance in the submissions made on behalf of the appellant that there is no employer-employee relationship between the appellants and original applicant and as such, the appellants are not liable to pay any compensation. The learned Commissioner has rightly applied the provisions of Section 12 of the Act of 1923. The appellants as well as respondent No.4 Co-operative Society have accepted in their respective written statements that respondent No.4 Co-operative Society was providing skilled persons to work on the establishment of the appellants and as such, the appellants would be the Principal Employer in terms of the provisions of Section 12 of the Act of 1923 and respondent No.4 is a contractor. Section 12 of the Act of 1923 is reproduced herein below :-

## **Section 12**

### **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 [employee] employed in the execution of the work any compensation which he would have been liable to pay if that [employee] 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 [employee] 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, [or any other person from whom the [employee] 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 [employee] 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 [employee] 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.

10. In terms of the provisions of Section 12 of the Act of 1923, as reproduced here-in-above, the appellants being the Principal Employer shall be liable to pay any employee employed in the execution of work any compensation which he would have been liable to pay if that employee had been immediately employed by him. In such a case, in order to work out the compensation, the amount of compensation is required to be calculated with reference to the wages of the employee under the employer by whom he is immediately employed. Thus, the learned Commissioner has rightly given weightage to the admission given by the applicant that he was getting Rs.3,000/-p.m. from respondent No.4 Co-operative Society and accordingly calculated the compensation in terms of Section 4 Sub section (1) Clause (d) and sub-section (2) of the Act of 1923. However, it appears that,

the learned Commissioner has not considered the provisions of Sub-section (2) of Section 12 of the Act of 1923. If the Principal Employer is liable to pay the compensation under the provisions of Section 12 of the Act of 1923, then the Principal Employer shall be entitled to be indemnified by the contractor and all the questions as to right and amount of any such indemnity shall be settled by the Commissioner including the claim of respondent No.4-Society about the payment of medical expenses incurred by the applicant. Thus, the impugned judgment and award passed by the Commissioner requires modification to that extent.

11. So far as question of Penalty is concerned, the learned Commissioner has directed the respondents to reimburse the applicant medical expenses incurred by him for treatment of the injuries caused during the course of employment. Section 4 (1) of the Act of 1923 speaks about the penalty only in case in default in paying the compensation due under the Act. In view of the same, I do not find any fault in the judgment and

award passed by the learned Commissioner, except the modification as discussed above. Hence, following order.

**O R D E R**

1. The appeal is hereby partly allowed. No costs.
2. The judgment and award passed by the Commissioner for Workmen's Compensation Act and Judge, Labour Court, Latur dated 1.4.2014 in WCA No.129/2011 is hereby modified in the following manner and clause No.3-(a) in the operative part of the order is to be inserted/modified which is as follows :-
  - a] Respondent Nos. 1 to 3 being a Principal Employer shall be entitled to be indemnified by the respondent no.4]- President, Gajanan Self Employment Co-operative Sanstha, Masalga (B), Tq. & Dist. Latur.
3. Rest of the Judgment and Award stands confirmed.
4. Award be drawn up as per the above modifications.

5. Appeal is accordingly disposed of.
6. Pending Civil application also stands disposed of.

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**( V.K. JADHAV, J. )**

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