

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

FIRST APPEAL NO. 3930 OF 2016

Chandrakant S/o Bhagwandas Toshniwal,
Age: 70 years, occ: Agri.
R/o Shiradhon, Tq. Kalamb,
Dist-Osmanabad.

...APPELLANT
(Ori. Respondent)

V E R S U S.

1. Sudhamati W/o Prabhu Jadhavar,
Age: 53 years, Occ: Household,
2. Haribhau S/o Prabhu Jadhavar,
Age: 33 years, Occ: Labour,
3. Bhaskar S/o Prabhu Jadhavar,
Age: 21 years, Occu: Education,
All R/o Tadgaon, Tq. Kalamb,
Dist. Osmanabad, now residing
At Wanjarwadi, Tq. Renapur,
Dist. Latur.

.... RESPONDENTS.
(Ori. Applicants)

...

Mr. B.A. Darak, Advocate for appellant.
Mr. B.R. Kedar, Advocate for respondents No. 1 to 3

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CORAM : K.K. SONAWANE, J.

RESERVED ON : 7TH SEPTEMBER, 2017.

PRONOUNCED ON : 13TH OCTOBER, 2017.

JUDGMENT :-

1. This is an appeal under section 30 of the Workmen's Compensation Act, 1923 against impugned order dated 09-08-2016 passed by the Ex-officio Commissioner of Workmen's Compensation and Judge, Labour Court, Latur in the proceedings

(WCA No. 42 of 2013) filed on behalf of present respondents - original applicants for compensation towards loss to the family on account of death of victim Prabhu Hari Jadhavar occurred due to electrocution during the course of his employment as "Salgadi" (Labour on yearly basis) i.e. workman as envisaged under section 2(1) (n) of the Workmen's Compensation Act, 1923 (for short "Act of 1923").

2. Factual matrix of the case in nutshell is that, ill-fated victim Prabhu Jadhavar resident of Tadgaon Ta. Kallam District Osmanabad was the husband of appellant No. 1 and father of respondents No. 2 and 3- original applicant. The appellant-original respondent was the owner and in occupation of agricultural land Gut No. 148 located within vicinity of village Shiradhon Ta. Kallam District Osmanabad. The appellant-owner of the agricultural land employed the victim Prabhu Jadhavar as "Salgadi" to look after the agricultural operation in his land on yearly basis. The person, namely, Rambhau Kisan Somase was also employed as "Salgadi" on yearly basis for doing the agricultural work accompanied with victim Prabhu Jadhavar. Both victim Prabhu and Rambhau were looking after the entire agricultural operation in the field of the appellant-original respondent. It has been contended that the victim Prabhu was engaged to do the agricultural labour work for the year 2005-2006. The remuneration of Rs. 36,000/- per annum i.e.

Rs. 3000/- per month was fixed to be paid to the victim Prabhu. Accordingly, during the relevant period of mishap, victim Prabhu used to do entire agricultural work in the field, as per instructions of the appellant Shri Chandracant Toshniwal. There was electric motor fitted on the well located in the field of appellant-original respondent for irrigation purpose. There was no terminal box for electric motor, but it was tied with GI wire to protect the electric motor from being fallen in the well and end of GI wire was left abandon by tying it to Babul tree.

3. According to the original applicant-family members of victim Prabhu, on the fateful day of mishap i.e. on 17-07-2005 victim Prabhu and his associate Rambhau, as usual since morning started their agricultural work in the field of the appellant-original respondent. But, it had something different in-store for the victim Prabhu. At about 9.00 a.m. Victim Prabhu switched on the electric motor installed on the well for watering the crops and indulged in the agricultural work of cutting grass nearby the well, unaware of his tragic end within short period. While cutting the grass victim Prabhu came into contact with GI wire tied with electric motor. There was electric supply in the GI wire from electric motor. Due to severe electric shock victim Prabhu breathed his last on the spot. In view of instant death of victim Prabhu in the field of appellant-original respondent following electrocution, the information was passed on to owner of the land

i.e. appellant as well as concerned Police of Shiradhon Police Station, Ta. Kallam, District Osmanabad. The adjoining land owners, Police personnel and appellant-owner of the land, thronged at the scene of occurrence. The labour Shri Rambhau Songane lodged the report of accidental death of his associate victim Prabhu owing to electrocution by live GI wire tied with electric motor fitted on the well in the field of appellant-original respondents. Pursuant to accidental report of Rambhau Songane, Police of Shirdhone Police Station registered A.D. No. 22 of 2005 under section 174 of the Criminal Procedure Code and set the enquiry of accidental death of victim Prabhu in motion. Police drawn the panchnama of scene of occurrence. The dead body was escorted to the Primary Health Centre, Shiradhon for autopsy to ascertain the exact cause of death. The medical experts conducted post mortem and opined that the death of Prabhu was caused due to thermal injuries following electric shock. Inquest panchnama was also drawn. The Office Personnel of Electricity Department at Latur visited to the spot of incident for inspection purpose. They forwarded report to the concerned Tahsildar that victim Prabhu died due to electrocution after coming into contact with GI wire/cable tied with electric motor installed on the well in the field of appellant-original respondent.

4. Due to sudden demise of earning member of the family the applicants-respondents were in shock and financial crises. They requested the appellant-original respondent (owner of the field) to compensate the loss. He had given assurance for payment of compensation after harvesting the crops, but efforts did not evoke result. The alleged death of victim Prabhu was caused due to electrocution arising out of and in the course of employment of the appellant-original respondent. The applicants-respondents herein had issued legal notice to the appellant-owner of the field, but no response received and eventually applicants being legal dependents of deceased Prabhu rushed to the learned Commissioner of Workmen's Compensation, Latur and preferred the application for compensation. It is asserted that in view of remuneration of the victim Prabhu @ Rs. 3000/- per month the applicants are entitled to receive compensation of Rs. 2,29,500/- from the employer. It has been contended that at the time of mishap, the victim Prabhu was 50 years old and therefore, after mathematical calculations as per factor given in Schedule IV of Section 4 of the Act of 1923, the reasonable compensation would accrued to Rs. 2,29,500/- payable to applicants respondents herein, being dependents of the victim Prabhu.

5. On receipt of notice of the application for compensation filed before the learned Commissioner, the appellant-original

respondent appeared and vociferously opposed the contentions put-forth on behalf of respondents herein-original applicants by filing written statement on record. The appellant-original respondent denied about employment of victim Prabhu on yearly basis as "Salgadi" in his field. He denied about accidental death of victim Prabhu due to electrocution, arising out of and in the course of his employment. It has also averred in the written statement that victim Prabhu visited to the field of appellant-original respondent to see his associate Shri Rambhau Somase, the another "Salgadi" (Labour employed on yearly basis). At that time victim Prabhu went to the well for drinking water, but he received the electric shock at the well due to his negligent conduct and he breathed his last. Therefore, appellant has no concern with alleged accidental death of victim Prabhu for compensation.

6. To buttress the of contentions, applicant No. 1 Sudamati w/o Prabhu Jadhavar stepped into the witness box to adduce evidence. She produced relevant documents in support of claim. The appellant owner of land also adduced the evidence to traverse contentions put-forth on behalf of applicants-claimants. The learned Commissioner, after appreciating entire evidence adduced on record arrived at the conclusion that respondents-original applicants being dependents of victim Prabhu are entitled to receive compensation of Rs. 2,29,635/- from the appellant

employer. It was also held that victim Prabhu Hari Jadhavar was workman employed by the appellant as "Salgadi" and during the course of employment as workman he breathed his last in the field of appellant-original respondent accidentally. Accordingly, the learned Commissioner passed the impugned order, the validity and propriety of which, is agitated in the present appeal.

7. The provisions of section 30 of the Act of 1923 provides that an appeal shall lie to the High Court against an order of the Commissioner awarding as compensation lump sum whether by way of a redemption of a half monthly payment or otherwise disallowing any claim in full or in part for a lump sum. It has also prescribed that no appeal shall lie against any order unless substantial question of law is involved in the appeal.

8. In view of the aforesaid provisions of Section 30 of the Act of 1923 it would fallacious to appreciate any of the factual determination which have been made in the impugned order passed by the learned Commissioner. However, the mode and tenor of the argument advanced on behalf of appellant, reflects that the substantial question of law involved in this appeal is as to whether the deceased Prabhu Hari Jadhavar was the workmen as envisaged under section 2(1)(n) of the Act of 1923 and his death was caused by electrocution, arising out of and in the course of his employment. Provisions of Section 2(1)(n) reads as

under:

*“2: **Definitions**-(1) In this Act, unless there is anything repugnant in the subject or context,-*

*(n) “Workman” means any person [***] who is-*

(i) a railway servant as defined in [Clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in schedule II, or

(i-a) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or]

*(ii) employed 21 [***] 22[***] in any such capacity as is specified in schedule II,*

*whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of [the armed forces of the Union] 24[***]; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.”*

9. Schedule II of the Workmen's Compensation Act, 1923, contains a list of persons who, subject to the provisions of section 2(1)(n) of the Workmen's Compensation Act, 1923 are included in the definition of workman. Entry (xxix) thereof provides as follows "employed in farming by tractors or other contrivances driven by steam or other mechanical power or by electricity". The entry has since been enlarged by amending Act 30/1995, which was brought into force on 15-09-1995. Ultimately the question is, as to whether the deceased Prabhu was the workmen under Schedule II Entry (xxix) of the Act of 1923 and he was employed in the farming by appellant as workman as per Entry (xxix).

10. While allowing the claim for compensation learned Commissioner observed that the deceased Prabhu Hari Jadhavar was engaged by the appellant as "Salgadi" for agricultural labour work on yearly basis for the year 2005-2006. The appellant-employer was paying the salary of Rs. 36,000/- per annum. It was held that during the course of employment, while cutting the grass nearby well the deceased Prabhu came in contact with live GI cable tied with electric motor and received severe electric shock and died on the spot. According to learned Commissioner, the circumstances adumbrates the relationship between appellant - land owner and deceased Prabhu in the capacity being employer and employee. Learned Commissioner concluded that

applicants have successfully proved that they are entitled for compensation under the Act of 1923 for accidental death of their family member deceased Prabhu Hari Jadhavar. The applicants also produced documents on record comprising A.D. report, spot panchnama, post mortem report, Electrical Inspector's report to fortify the contentions of accidental death of Prabhu in the filed of the appellant-employer following electrocution. These documents categorically reflect that the death of victim Prabhu occurred in the field of appellant accidentally due to electrocution.

11. Provisions of section 3 of the Act of 1923 reflects that in order to sustain the claim for compensation, injury must be caused to workmen by accident arising out of and in the course of his employment. The death or injury has to be to a workmen in order to sustain the claim of compensation. The accidental death should have some nexus and proximity with the employment. It must be shown occurred out of and in the course of employment. Section 2(1)(n) of the Act of 1923 defines a person, who is workmen as referred supra. Therefore, in order to be a workmen as contemplated in Section 2(1)(n) of the Act of 1923, the person must be employed in one of the capacities specified in Scheduled II of the Act of 1923.

12. The Entry (xxix) of Schedule II covers employment in framing by tractor or other contrivances driven by steam or other

mechanical power or by electricity. Parliament has restricted the operation of Entry (xxix) to the employment in farming by specified modes. The object and purpose of the Legislature was, obviously, seen not to cover persons employed in all kinds of farming, but to cover cases where the farming is being carried out through one of the specified modes. The first mode is farming by tractor and thereafter it is followed by a residuary clause, which contemplates the farming by other contrivances driven by steam or other mechanical power or by electricity. The expression other contrivances would cover the other devices to carry out farming activities. The activities should be by device which used to be driven by steam or other mechanical power or by electricity. It is rule of law that the words of Entry (xxix) ought not to be given a narrow or restricted operation. At the same time it would imperative to take into consideration the circumstances in which the Legislature has to specified three sources, which set in motion the operation of contrivances used in the farming. These three sources would be by steam or other mechanical power or by electricity.

13. In the instant matter, the appellant – land owner since beginning clamoring on the issue of employer - employee relationship in between himself and deceased Prabhu. But, there was no averment or pleading the written statement filed on his behalf that deceased Prabhu was not the workman as per Section

(2)(n) of the Act of 1923. Moreover, there was no whisper that the farming in the present case was not being carried out by tractor or by other contrivances driven by steam or other mechanical power or by electricity. But, the appellant-land owner opposed the contentions putforth on behalf of claimants-dependents of the deceased Prabhu on the grounds that he was not employed as "Salgadi" for agricultural operation in the field of appellant on yearly basis. However, in view of evidence on record as well as the documents comprising the report of Somase, associate of deceased Prabhu and one of the employee of land owner-appellant, spot inspection report of Electrical Inspector, inquest panchnama and oral testimony of applicant Sudamati Jadhavar would go to show that while cutting the grass deceased Prabhu came into contact with GI live cable of the electric motor and breathed his last. The A.D. Report of Rambahu Somase indicate that the victim Prabhu switched on the electric motor for watering the crop and started his other work of cutting the grass nearby the well. These circumstances would reflect that the victim Prabhu was utilizing the device of electric motor for watering the crops in the field of appellant. It is to be noted that in cases under Workmen's Compensation Act, 1923 the strict application of C.P.C. or evidence Act is - impermissible. Therefore, the inference can be drawn that there was employer and employee relationship in between the appellant and

deceased Prabhu.

14. Obviously, question as to whether the person is workmen or not is the jurisdictional issue which goes to the root of the claim for compensation under the Act of 1923. Therefore, it was incumbent for the applicants - claimants to establish at the inception that the deceased was a workmen within the meaning of Act of 1923. Moreover, if the exception from the definition of the phrase "workmen" is to be established burden to do so would lie on the employer. In the instant case, when it was established that the deceased after switched on the electric motor for watering the crops, started doing agricultural work of cutting the grass in the field nearby the well of appellant and during the course of his employment he succumbed to the electric shock the burden to establish, the exception would lie on the employer.

15. It is worth to mention that, the defence of the appellant-land owner was that he was not the owner of the agricultural land of the spot of incident. The victim Prabhu was not his employee for agricultural labour work. But the land was mutated in the name of his mother. These factual aspect cannot be the subject matter of present appeal within the ambit of section 30 of Act of 1923. Be that as it may, the appellant-respondent did not plead that he was not carrying on farming activities in any way of the modes specified in Entry (xxix) of Act of 1923. It was not

specifically incorporated in the written statement of appellant filed before the Commissioner. In such peculiar circumstances, I am of the opinion that the question of law, which has been sought to be canvassed on behalf of appellant in this appeal, was without laying foundation of the facts before the learned Commissioner in the original proceedings. The question as to applicability of the Entry (xxix) of the Act of 1923 would have arisen if that question was put in issue and dispute was raised on behalf of appellant before the learned Commissioner. But, written statement of the appellant filed before the learned Commissioner appears silent and there was no whisper about the applicability of the Entry (xxix) of the Act of 1923, in this case. In these circumstances, when dispute was not raised by the appellant in regard to the applicability of Entry (xxix) before learned Commissioner, it would not be appropriate and justifiable for the appellant to now contend these facts particularly within the parameters of an appeal under section 30 of the Act of 1923.

16. The factum of bare denying employer and employee relationship would not itself sub-serve the purpose to discharge the burden cast on the employer relating to applicability of the Entry (xxix) of the Act of 1923 in this case. In contrast, the circumstances brought on record manifestly demonstrate that the deceased Prabhu was engaged for agricultural labour work. He was utilizing the electric motor as an device for watering the

crops. He used to look after irrigation of the field on behalf of appellant. But, during the course of employment he died due to electrocution, after switched on the electric motor for the purpose of watering crops. In such circumstances, it would unsafe to draw adverse inference that he was not workmen. No any evidence on the part of employer, available on record that he was not carrying farming in any way of the modes specified in the Entry (xxix) i.e. farming by other contrivances driven by steam or other mechanical power or by electricity. Moreover, in absence of any averments in the written statement, it would hazardous to brush aside the evidence adduced on record on behalf of applicants – respondents herein to prove that he was the workman engaged for agricultural labour work in the field of the appellant. There was employer and employee relationship in between appellant and deceased Prabhu. His death was caused in the field of the appellant accidentally arising out of and during the course of his employment.

17. It would be reiterated that, the question of the appellant-original respondent leading evidence to establish employment in the capacity set out in the Entry (xxix) would have arisen if that was placed in issue by the appellant. But, it appears that there was no endeavour to that effect in the proceeding before the learned Commissioner. In such peculiar circumstances, I am of the view that order of compensation in the facts and

circumstances passed by the learned Commissioner would not be faulted or blamed being erroneous and perverse one. There is no propriety to cause any interference in the findings expressed by the learned Commissioner and the same are required to be made confirm and absolute.

18. Learned counsel for the appellant made valiant attempt to raise point of limitation at this stage in the appeal. It has been alleged that applicant filed the application for compensation after efflux of colossal period of alleged incident as prescribed under section 10 of the Act of 1923. He submits that there is no provision for condonation of delay under section 10 of the Act of 1923. Therefore, the application for compensation being time barred application, the same deserves to be dismissed. I find it painful to accept the submission advanced on behalf of learned counsel for the appellant for the reason that so-called issue of limitation was not raised at the initial stage of the proceedings before the learned Commissioner. No doubt, under section 10(1) of the Act of 1923, the claim for compensation is required to be preferred within two years of the occurrence of accident or, in case, of death within two years from the date of death. The fifth proviso to sub-section (1) contemplates that the Commissioner may entertain and decide any claim to compensation, in any case notwithstanding that it has not been preferred in due time as provided in the said sub-section, if he is satisfied that the failure

to prefer the claim was due to sufficient cause. In the instant case, the appellant-respondent did not raise objection about application being time barred before the learned Commissioner and when the application was entertained and dealt with by the learned Commissioner finally on merit in presence of appellant, it would be unjust and improper to allow the appellant to raise such objection on the point of limitation at this belated stage in the appeal.

19. In the above premise, I am of the opinion that there is no propriety to cause any interference at the behest of appellant-original respondent, in the findings expressed by the learned Commissioner. The impugned order cannot be faulted nor blamed being perverse. Therefore, I prefer to confirm the operative order passed by learned Commissioner. In the light of above, the appeal stands dismissed. No order as to costs.

Sd/-
[K. K. SONAWANE]
JUDGE

20. At this stage after pronouncement of Judgment, learned counsel for appellant prays for stay to the Judgment and Order passed by this Court to facilitate the appellant to approach to the Appellate Forum for redressal of his grievance. Learned counsel for respondents opposed for the same.

21. The matter is pending for compensation since year 2013. The learned Commissioner has applied his mind. This is an appeal under Section 30 of the Workmen's Compensation Act for adjudication of substantial question of law raised in this appeal. Therefore, I am not inclined to give respite to the Judgment and Order of this Court. Hence, request for stay is hereby turned down and refused.

Sd/-

[K. K. SONAWANE]
JUDGE

mtk.
