

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

FIRST APPEAL NO. 1267 OF 2013

WITH

CIVIL APPLICATION NO. 872 OF 2016

IN

FIRST APPEAL NO. 1267 OF 2013

Bajaj Allianz Gen. Insurance Co. Ltd. ...Appellant

Versus

Smt. Lali Durjadhan Pradhan & Ors. ...Respondents

Mr. M.M. Sathaye, for the Appellant.

Ms. Varsha Nichani, for the Respondents No. 1 to 4.

CORAM : M.S. SONAK, J.

DATE : 4 April 2017

ORDER :

1. Heard Mr. Sathaye, the learned Counsel for the Appellant and Ms. Varsha Nichani, the learned Counsel for the Respondents No. 1 to 4 (original Claimants).

2. This Appeal was admitted on 15 March 2016 and interim relief was granted in terms of prayer clause (a) of Civil Application No. 3530 of 2013 after recording that the Appellant has deposited the

entire award amount before the Commissioner for Workman's Compensation, Thane.

3. Mr. Sathaye, the learned Counsel for the Applicant submits that this Appeal raises the following substantial questions of law :-

(a) Whether, the finding that the deceased Durjadhan died on account of accident arising out of and in the course of his employment is vitiated by perversity, since, the admission of the claimant No. 1 that Durjadhan died when he was doing the work of repairing the shed of their house, has been ignored?

(b) Whether, the finding that the deceased was drawing salary of Rs. 4,000/- per month is vitiated on account of perversity, since, there is no oral or documentary evidence emanating from the employer to sustain this finding?

4. Mr. Sathaye, the learned Counsel for the Appellant relies upon the following portion of the deposition of Smt. Lali Durjadhan Pradhan, the widow of the deceased Durjadhan, to submit that the

accident which resulted in the death of Durjadhan cannot be said to be arising out of and in the course of employment of Durjadhan.

“It is true that at the time of incident the deceased was doing the work of tin shed of his house and he died due to electrocution. It is true that, that time I was inside of the house. The incident occurred at about 3.00 p.m. It is true that at that time he came for lunch.”

5. He submits that there is absolutely no material on record to establish that the Tin Shed, which is referred to in the aforesaid deposition of Smt. Lali, the widow of the deceased, has any nexus whatsoever with the employment of the deceased Durjadhan. If the deceased, died on account of electrocution, while he was doing the work of tin shed of his house, it cannot be said that the death is on account of any accident arising out of or in the course of his employment. Unless this jurisdictional parameter is fulfilled, there is no question of any liability arising under the Employee's Compensation Act, 1923.

6. Mr. Sathaye also submits that in this case, the Employer was not examined by the Claimants in order to prove the actual

income drawn by the deceased Durjadhan. He submits that there is neither any oral evidence nor any documentary evidence emanating from the employer to establish that Durjadhan was drawing salary of Rs. 4,000/- per month and thus, the finding to this effect is vitiated by perversity, since, such finding, is based upon “no evidence”. He submits that a reliance placed upon a finding, which is based upon “no evidence”, does raise a substantial question of law.

7. Ms. Nichani, the learned Counsel for the Respondents No. 1 to 4 (original Claimants) submits that in this case the employer has filed a Written Statement, in which, it has admitted in entirety that Durjadhan died out of the accident which arose out of and in the course of his employment. He submits that the evidence on record clearly establishes that Durjadhan was employed as construction labourer and when he was carrying out the work of covering the shed with plastic/tin sheet, at the site itself, he was electrocuted and suffered the injuries. He submits that it is usual for construction labourers to occupy some residential accommodation at the site itself and if material on record is considered entirely, it clearly shows that death has occurred on account of accident which arose out of and in the course of Durjadhan's employment. She points out that since, the income was admitted by the employer, there was no necessity even to frame any issue on that aspect, much less, lead any evidence in the *Sharayu*.

matter. She submits that the income of Rs. 4,000/- per month, in the facts and circumstances of the present case, represents a very reasonable income in respect of the construction labourer. She submits, therefore, that the questions raised by the Appellant are relating to appreciation of evidence and not any substantial questions of law. She submits that even otherwise, the evidence on record is more than sufficient to sustain the findings recorded by the Commissioner. On this basis, Ms. Nichani submits that the Appeal may be dismissed.

8. Rival contentions now fall for determination.

9. The Claimants, in paragraphs 1, 2 and 4 of their claim, had made the following averments :-

“1. ***Late Shri Durjadhan @ Duryodhan Raghunath Pradhan***, a Workman/Labourer employed by the Opposite Party No. 1, received personal injuries by an accident arising during and in the course of his employment resulting in his death on 2.06.2010.

2. The cause of the death was the accident which occurred on **2.06.2010 at about 3.00 p.m. on the**

construction site of Milan Hills, Sarkar Nagar, Shastri Nagar, Thane, wherein the deceased workman who was employed by the Opposite Party No. 1, for doing construction work and while carrying out the work of covering the sheds with plastic sheets, he got an electric shock, due to which he got electrocuted and fainted, thus falling on the ground. The deceased was then taken to the Thane Municipal Hospital for medical help but he was declared dead by the doctor on duty.

4. *The monthly wages of the deceased amounted to **Rs. 4,000/-**. The deceased was over the age of 15 years and was **28 years** old at the time of his demise.”*

10. Employer i.e. Sohan Enterprises-Opposite Party No. 1 filed a Written Statement before the Commissioner. Paragraphs 1, 2 and 3 of the Written Statement reads as follows :-

“1. *The Opposite Party No. 1 admits the contents of the para No. 1 fully.*

2. *With reference to para No. 2 of the application the*

Opposite Party No. 1 does not admit the contents, as it is within the knowledge of the applicants.

3. *The Opposite Party No. 1 admits the contents of para No. 4 partly only as regarding the wages and states that the deceased was getting wages of Rs. 4,000/- per month (Rupees Four Thousand Only), but do not have knowledge about the exact age of the deceased and put the applicants to the strict proof thereof.”*

11. Appellant Insurance Company also filed its Written Statement in the matter admitting that there exists the Insurance Policy covering the liability of the employer in respect of 5 skilled workers, 5 unskilled workers and 1 Mukadam. The Insurance Company, has practically denied everything else.

12. In the matter of this nature, what is really relevant is the Written Statement filed by their employer. The Employer, in terms, has admitted that Durjadhan was the workman/labourer employed by the Opposite Party No. 1 and further, the said workman/ labourer received injuries by an accident arising out of and in the course of resulting into the death on 2 June 2010.

13. The employer-Opponent No. 1 has also admitted that Durjadhan was getting wages of Rs. 4,000/- per month.

14. Neither the employer nor Insurance Company, anywhere stated that the work of putting plastic or tin sheds was some activity which was carried out away from the construction site or that such activity had no nexus whatsoever with the construction activity undertaken by the employer-Opponent No. 1. The widow of Durjadhan-Claimant No. 1 in her Affidavit in lieu of Examination in Chief has categorically deposed that her husband who was workman/labourer met with an accident on 2 June 2010 which arose out of and in the course of his employment with the employer, resulting in his death. She also deposed that the accident took place when her husband was undertaking the work of covering the sheds on the site with plastic sheets and while putting the plastic sheets on the electric sheds, he got electrical shock, which resulted into death. She has also deposed that the work undertaken by her husband was as per the instructions of the employer.

15. In the cross-examination of Smt. Lali, the widow of Durjadhan, on behalf of the employer, there was no challenge whatsoever to the statement that the deceased Durjadhan died from

electrocution while he was undertaking the work which he was instructed to carry out by the employer. Further, there is no challenge whatsoever to Smt. Lali's statement that Durjadhan died when he was covering the shed on the site with plastic sheet, on account of electrocution. The only challenge on behalf of the employer was on the context of age of the deceased and the quantum of compensation.

16. The evidence in the course of cross-examination on behalf of the Opponent No. 1 is transcribed below for ready reference:-

“I have not produced on record the age proof the deceased. It is not true that at the time of accident the deceased was more than 28 years. I do not know whether opponent No. 1 has hand over the insurance papers to opponent No. 2. It is not true that I have filed the claim application of excessive amount and opponent No. 1 is not liable to pay compensation, interest and penalty.”

17. Mr. Sathaye, has however, relied upon the portion extracted above (para 4) in the course of cross-examination of Smt.

Lali by the Advocate on behalf of the Insurance Company. Smt. Lali has stated that at the time of accident, the deceased was doing work of tin shed of his house and he died due to electrocution. She has deposed that at that time, she was inside the house. In my Judgment, such a statement, makes no dent upon the evidence on record to the effect that the accident took place in the accident arising out of and in the course of employment of deceased Durjadhan. In particular, it is to be noted that even on behalf of the Opponent No. 2, there was really no challenge to the statement of Smt. Lali that the work which Durjadhan was undertaking at the time when he was electrocuted, was on the basis of instructions from the employer. Further, there is no challenge to the statement that Durjadhan was covering the sheds on the site with the plastic sheets. All these material, sufficiently establishes that Durjadhan died out of an accident which arose out of and in the course of his employment. The evidence of Smt. Lali has to be construed in its entirety. It is not open for any party to read any stray sentence from the deposition out of the context. As noted earlier, even the employer did not really challenge the fact that an accident arose out of and in the course of employment of deceased Durjadhan. Accordingly, it is not possible to accept the first contention of Mr. Sathaye in support of this Appeal.

18. So far as the second contention is concerned, the employer, has admitted that Durjadhan was not only employed, but, also that Durjadhan was being paid salary of Rs. 4,000/- per month. In case, Insurance Company, had any doubt, then, the Insurance Company could have always summoned the employer to depose on this aspect. Besides, as contended by Ms. Nichani, salary of Rs. 4,000/- per month in respect of the construction labourer cannot be regarded as something unreasonable or excessive in the facts and circumstances of the present case. Accordingly, it is not possible to accept the second contention of Mr. Sathaye in support of this Appeal. The Appeal accordingly, fails and the same is dismissed.

19. As the Appeal is dismissed, the Respondents No. 1 to 4 i.e. the Claimants shall be entitled to withdraw the compensation amount deposited by the Appellant before the Commissioner in terms of the impugned Judgment and order.

20. The Civil Application seeking withdrawal also stands disposed of in the aforesaid terms.

21. The interim order, if any, is vacated. No costs.

[M.S. SONAK, J.]