

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

934 FIRST APPEAL NO.1788/2017

WITH

CA/12060/2017

WITH

CA/14512/2015

THE EXECUTIVE ENGINEER, MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LTD. KALYAN EAST DIV.NO.1, NETIVALI,
DOMBIWALI.

VERSUS

ASHABAI WD/O. KAILASH SOUNULE AND OTHERS

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Advocate for Appellant : Mr.P.B.Paithankar

Advocate for Respondent Nos.1 to 3 : Mr.S.S.Rathi

Advocate for Respondent Nos.4 & 5 : Mr.Mohit Deshmukh
h/f.Mr.P.S.Agrawal

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CORAM : M.S.SONAK, J.

DATE : 9.1.2018

ORAL ORDER:-

1) Heard Mr.P.B.Paithankar, learned counsel for the
appellant, Mr.S.S.Rathi, learned counsel for respondent
Nos.1 to 3 and Mr.Mohit Deshmukh learned counsel for
respondent Nos.4 and 5.

2) Mr.Paithankar, learned counsel for the appellant

submits that substantial question of law involved in this appeal is whether in the absence of any documentary evidence, the deceased Kailash Sounule could at all be said to have been an employee of the appellant/original respondent No.1.

3) He submits that there was no documentary evidence produced on record to make good the claim of employment. He submits that the material on record suggest that deceased Kailash Sounule was the employee of respondent No.6, which is the Self Employment Service Society Ltd., and therefore, no claim was maintainable against the appellant herein. For these reasons, Mr.Paithankar, learned counsel submits that the impugned Judgment and order, to the extent it foists liability on appellant, be side aside.

4) Mr.Deshmukh and Mr.Rathi, the learned counsel submit that there was no evidence led on behalf of respondent No.1 in this matter and the evidence on behalf of the

claimants has gone unchallenged. In any case, they submit that the question raised, cannot be construed as a question of law, much-less a substantial question of law as contemplated by Section 30 of the Employees' Compensation Act, 1923.

5) In this case, it is a fact that no evidence was led on behalf of the appellant/original respondent No.1. The claimants examined PW-1 Ashabai Kailash Sounule, widow of Kailash Sounule, who expired in the accident arising out of and in the course of his duties. She has deposed that Kailash was working as Supervisor with Sub-Engineer, Netivali, Section-1 and he was working on the order of Executive Engineer dated 4.4.2008. She has also deposed that the deceased was having a valid licence for the discharge of such duties. She has also deposed that the deceased was working with Junior Technician, Eknath Sukhdev Kamble at Techone Petrol Pump, Kalyan Sheet Road, Golivali, Tq.Kalyan, Dist.Thane. She has deposed that her husband was doing the work on electric pole as a

part of his duties and died of electrocution (electric shock).

6) It does appear that no dent has been made to the deposition of the PW-1 Ashabai in the course of her cross-examination. Apart from this, the appellant has not led any evidence to explain the documents produced on record by witness PW-1. In these circumstances, it cannot be said that the finding of fact as to the employment of the deceased with the appellant is vitiated by any perversity or is based upon no evidence.

7) In any case, the learned counsel for the respondents are right in their submissions that the question as raised can hardly be styled as the question of law, much-less any substantial question of law.

8) The proviso to Section 30 of the Employees' Compensation Act, 1923 in terms provides that no appeal shall lie against any order made by a Commissioner unless

substantial question of law is involved in the appeal. Since, no such substantial question of law is involved in this appeal, this appeal need not be entertained and is liable to be dismissed.

9) The appeal is accordingly dismissed. There shall be no order as to costs.

10) The Civil Application No.12060 of 2017 seeking withdrawal of compensation is disposed of with a direction that the deposited amount be disbursed in terms of the Commissioner's Order, which was impugned in this appeal. The Civil Application is disposed of accordingly.

11) Since, the appeal is disposed of, application of stay does not survive and same is dismissed.

[M.S.SONAK, J.]