

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

FIRST APPEAL NO. 1760 OF 2007

Godavari Marathwada Irrigation
Development Corporation,
through the Executive Engineer,
Upper Pravara Project,
Ghulewadi, Sangamner,
District Ahmednagar`

...Appellant

VERSUS

- 1] Bajirao Raghunath Gunjal,
age 50 years, occ. Nil,
- 2] Tarabai w/o Bajirao Gunjal,
age 50 years, occ. Household,
- 3] Appasaheb Bajirao Gunjal,
age 26 years, occ. Service,
all r/o Tisgaon post Pravaranagar,
Tq. Shrirampur, Dist. Ahmednagar
- 4] Alka @ Manda w/o Govinda Gunjal,
age 19 years, occ. Household,
r/o Rajuri Post Rajur,
Tq. Shrirampur, Dist. Ahmednagar,
- 5] Karegaon Wadar Majoor
Sahakari Society Ltd. At post
Karegaon, Tq. Shrirampur,
Dist. Ahmednagar,
(s/s be served on its Chairman)
- 6] Kacharu s/o Laxman Gaikwad,
age 55 years, occ. Contractor,
r/o Morga Vasti, Ward No.7,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

...Respondents

[Resp. nos. 1 to 4 orig.
applicants and Resp.
Nos. 5 and 6 orig.
Resp. Nos. 2 and 3]

...

Mr. A.G.Kanade, advocate for Appellant

Advocate Monali Patil h/f

Mr. S.D.Kulkarni for Respondent nos. 3 and 4

Mrs.Renuka Ghule for Respondent nos. 5 and 6 absent

Appeal abated against Respondent nos. 1 and 2

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CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT

: 12.9.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT

: 26.9.2018

J U D G M E N T :

This appeal is directed by original opponent no.1 Godavari Marathwada Irrigation Development Corporation against the judgment and order, passed by the Commissioner under Workmen's Compensation Act, Labour Court at Ahmednagar, on 26.9.2002. Respondent nos. 1 to 4 are original claimants. Respondent no.5 is original opponent no.2/Contractor. Respondent no.6 is original opponent no.3/Sub-Contractor.

2. Facts, leading to the institution of this appeal are that, the original claimants are the dependents of deceased Govind Bajirao Gunjal, who

used to work as Labour on the site of work of repairs of canal near village Rajuri at Mile No.19. On 14.10.1988, at the time of repairs work, due to slide of debris, the deceased was buried, which resulted into his accidental death on the spot. Therefore, the dependents of deceased filed application No. 40 of 1989 before the Labour Court, Ahmednagar under Section 22 of the Workmen's Compensation Act, 1923 (now nomenclature changed as 'Employee's Compensation Act, 1923').

3. The said application was opposed by the opponents denying relationship as employer and employee with the deceased. The main defence of opponent no.1 Corporation was that the work of canal was entrusted to opponent no.2 Contractor. However, opponent no.2 without authority, appointed opponent no.3 as Sub-Contractor, and therefore, opponent no.1 is not responsible to pay any compensation to the claimants.

4. Heard strenuous arguments submitted by Shri A.G.Kanade, learned counsel for the appellant

and Advocate Monali Patil holding for Shri S.D.Kulkarni, learned counsel for respondent nos. 3 and 4.

5. Learned counsel for the appellant assailed the judgment, passed by the learned Commissioner, only on the ground that there is absolutely no evidence regarding contract in between respondent no.1 and the deceased as employer and employee. He submits that when relationship between respondent no.1 Corporation and the deceased is not established, respondent no.1 is not liable to pay any compensation to the claimants.

6. In reply, learned counsel for the original claimants submits that though there is no documentary evidence to prove relationship of employer and employee in between original respondent no.1 and the deceased, entire work of repairs of the canal was going on under the supervision of respondent no.1. Therefore, respondent no.1 cannot avoid its liability to pay

the compensation when deceased was appointed on the site of work as labour. He has also raised technical objection that under Section 30 of the Employee's Compensation Act, the appeal is not tenable as question of law does not arise.

7. At the out set, I must take into consideration the technical objection raised by the learned counsel for original claimants that the appeal is not tenable in view of proviso to Section 30 of the Employee's Compensation Act. However, this objection holds no substance, for the simple reason that in the case at hand, question of law certainly arises, whether the relationship of employer and employee is established by the claimants under the provisions of the Employee's Compensation Act. Thus, preliminary objection raised by the learned counsel for the claimants is rejected.

8. After perusal of the documents and evidence placed on record, it reveals that no documentary evidence is available to establish

direct relationship in between respondent no.1 Corporation and the deceased as employer and employee. However, rightly pointed out by the learned Commissioner, Vikram Gunjal (PW 3), who is the employee of respondent no.1 Corporation, has placed on record copy of tender regarding above said work of repairs of canal (Exh. U-38). In his evidence, he has specifically stated that when the work of sinking of canal was going on, due to sliding of debris, the deceased Govind was buried resulting into his death on the spot. This witness has also made it clear that this accident took place at the work site which was given to respondent no.2 Majdoor Cooperative Society. No doubt, from his cross-examination, respondent no.1 Corporation has brought on record that under the terms of tender contract, the contractor cannot assign the work to Sub-contractor. However, this admission is not material, because that will be the dispute in between respondent nos. 1 and 2. On account of that dispute, the right of the claimants to claim compensation cannot be affected, if they have such right. About the death of deceased

Govind, P.S.I. Tambe (PW 2) has also placed on record police papers to show the alleged occurrence of the accident. Even the occurrence of the accident and death of Govind Gunjal is admitted by all the witnesses examined by original respondents. Thus, it is clear that deceased Govind Gunjal died on the work site of original respondent no.1 Corporation when the work of repairs of canal was going on.

9. On behalf of respondent no.1 Corporation, Sharad Mitkar (DW 1), who is the Deputy Engineer working with respondent no.1, has admitted in his cross-examination that it is the work of respondent no.1 Corporation to repair and maintain the canal and the accident occurred when the work of repairs was going on. This witness has also admitted in his cross-examination that respondent no.2 contractor was engaged by respondent no.1 to get the said work done and some amount of respondent no.2 is retained by respondent no.1 to discharge the liability of respondent no.2. This admission indicates that even respondent no.1 Corporation

acknowledges its responsibility to pay the compensation, if any untoward incident occurred on the site.

10. One most important aspect is that, the repairs of the canal work was going on under the supervision and authority of respondent no.1 Corporation. Therefore, respondent no.1 cannot deny his knowledge regarding repairs work going on the site and the labours appointed by the contractor or the Sub-contractor. In view of Section 12 of the Employee's Compensation Act, respondent no.1 Corporation certainly falls in the category of 'employer' of the labours, who worked on the site. Therefore, he is also equally responsible to pay the compensation to the claimants on account of accidental death of Govind Gunjal at the work site. If respondent no.2 has committed any overt act of breach of terms of the contract by delegating his work to respondent no.3, then respondent no.1 may recover the amount of compensation paid to the claimants from Respondent no.2, in accordance with law. However, at this

stage, respondent no.1 cannot evade his joint and several liability to pay the compensation to the claimants, who lost their sole bread winner in the family. I hold that, sufficient material is available on record to establish relationship in between respondent no.1 Corporation and deceased Govind Gunjal as employer and employee, with the aid of Section 12 of the Employee's Compensation Act.

11. Learned counsel for original claimants placed reliance on "**Guru Nanak Industries vs State of Maharashtra and others**" [2005 (1) Mh.L.J. 887] regarding rights of casual worker under the Act. However, in the case at hand, nobody raised objection regarding capacity of deceased as worker within the meaning of Section 2 (n) of the Employee's Compensation Act. I hold that the ratio of this authority needs no more consideration.

12. Regarding the quantum of compensation, learned counsel for appellant has not taken any objection. Otherwise also, after going through the

judgment passed by the learned Commissioner, I am fully satisfied that the learned Commissioner assigned proper reasons for holding that employer and employee relationship is established in between respondent no.1 Corporation and the deceased and awarded adequate compensation to the claimants.

13. In the result, this appeal being devoid of any merits deserves to be dismissed. Accordingly, appeal is dismissed. Parties to bear their own costs.

[SUNIL K.KOTWAL, J.]

dbm