

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

FIRST APPEAL NO. 299 OF 2017

1] Hajarat Musa Aliyas
Mo Isar Karamulla,
age 48 years, Occ.Labourer,
R/o Kanka, T\$q. & Dist. Hingoli,

2] Aminabegum Hajarat Musa,
age 41 years, occ. Nil,
R/o as above

...Appellants
[Original Claimants]

VERSUS

1] Rahemankhan Ishak Khan,
age 51 years, occ. Business,
R/o Tokiya Sindhari,
Tq. Guda Malani,
Barmer – 314 001 (Rajasthan),
(Owner of Truck Bearing
Reg. No. RJ-04/GA-6028),

2] Branch Manager, The New India
Assurance Co. Ltd.,
Branch office, Main Road,
Parbhani,
Tq. And Dist. Parbhani

...Respondents
[Orig.Respondents]

...

Mr. P.S.Agrawal, advocate for appellants
Mr. S.R.Bodade, advocate for Respondent no. 2
Respondent no. 1 served

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT : 08.10.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT : 16.10.2018

J U D G M E N T :

This appeal is directed against the judgment, passed by the Commissioner for Employee's Compensation under Employees Compensation Act, 1923, Hingoli in Application No. 1 of 2013, dismissing the petition for compensation.

2. Appellants are original claimants. Respondent no.1 is owner of the vehicle involved in the accident and Respondent no.2 is insurer of the vehicle.

3. Facts, in nut shell, are that the claimants claim that they are the parents of deceased Tarbej Ali Hajarat Musa Aliyas Mo Isar. The deceased used to work as labour of offending truck No. RJ-04/GA-6028 owned by respondent no.1. The truck was insured with respondent no.2 under Workmen's Compensation Act. On 17.10.2012 when truck was proceeding from Allahabad to Pune, that time deceased was also traveling in that truck as labour. At Satyagrahi Ghat near Talegaon (Shami

Pant) on National High Way No.6, driver of the offending truck lost control and as a result the truck dashed against truck No. WB-23/B-4228 coming from opposite direction. Due to accidental injuries, deceased died on the spot of the accident. The occurrence was informed to the concerned police station and offence was registered against the driver of the truck. As the respondents refused to pay compensation to the claimants, this petition under Section 4(1)(c) of the Employee's Compensation Act, 1923 (hereinafter referred to as, 'the EC Act') arises.

4. The issues were framed in the matter and after considering the evidence placed on record by claimants, the Commissioner dismissed the petition on the ground that claimants cannot establish their relationship with deceased. So also, relationship in between respondent no.1 and deceased as employer employee is not established. The Commissioner also held that he has no jurisdiction to entertain the claim petition.

5. Heard Shri P.S.Agrawal, learned counsel for the appellants and Shri S.R.Bodade, learned counsel for respondent no.2 insurer.

6. Learned counsel for the appellant submits that the owner was proceeded ex parte and though the residence of claimants at Kanka, District Hingoli is not disputed by respondent no.2, the Commissioner erroneously dismissed the petition on the ground of want of jurisdiction. He submits that no issue was framed regarding jurisdiction of the Commissioner and thus no opportunity was given to bring on record evidence regarding the residence of claimants at village Kanka, District Hingoli. In the alternate, his submission is that the Commissioner should have returned the petition for its presentation before the proper forum, if it has come to the conclusion that it cannot entertain the claim for want of jurisdiction.

7. Learned counsel for respondent no.2 submits that all issues are answered in negative by the Commissioner. He has drawn my attention towards

Section 21 of the EC Act and submits that no reliable evidence regarding residence of claimants at village Kanka has been placed on record. He has drawn my attention towards cross-examination of claimant PW 1 and submits that claimant himself is not aware of particulars regarding village Kanka. Therefore, the claimant being unreliable witness, his testimony cannot be relied upon. He has pointed out that in the police papers at different place name of the deceased is mentioned in different manner. No documentary evidence has been placed on record by claimants to prove that the deceased was their son. In the alternate, his submission is that no premium was paid for labours to cover their risk under the EC Act.

8. However, after going through the policy of insurance, it emerges that it is comprehensive policy, which covers the risk of driver as well as the cleaner or conductor. Therefore, preliminary objection raised by learned counsel for respondent can be considered if it is proved that deceased was driver or cleaner of the truck.

9. After going through the pleadings of the parties, it emerges that in the title clause itself the claimant no.1 has mentioned his name in very confusing manner as Hajrat Musa Aliyas Mo Issa Karamulla, resident of Kanka, District Hingoli. It is to be noted that in the petition the claimants have nowhere mentioned regarding their permanent place of residence, from where they shifted to village Kanka, District Hingoli. In para 10 of the petition, claimants have pleaded that after demise of their son the claimants started residing at village Kanka, District Hingoli. Prima facie, no documentary evidence has been placed on record by the claimants to prove that they are residents of village Kanka, District Hingoli to hold that the Commissioner has territorial jurisdiction to entertain the petition.

10. The claimants have filed certificate regarding their residence, issued by the Grampanchayat, Kanka. After carefully going through this certificate, it emerges that on the face of it, it is a doubtful document, as it does

not bear outward number of Grampanchayat, Kanka, Taluka and District Hingoli. Even from cross-examination of claimant PW 1, it emerges that he never went to Grampanchayat office for obtaining certificate of residence of village Kanka. He cannot tell the name of the Village Development Officer or name of the Sarpanch of village Kanka. He is not aware regarding population of the village and even he cannot tell the names of 4-5 persons from village Kanka. From his cross-examination, it emerges that the claimants are originally residents of Vishnupur, Taluka Raniganj, District Pratapgad (U.P.) and till today the claimants could not obtain election card, ration card, adhar card or any certificate regarding residence of village Kanka.

11. Section 21 of the EC Act indicates that only the Commissioner under the EC Act has jurisdiction to entertain the petition for the area in which, (a) the accident took place; (b) the employee or in case of his death, the dependant claiming the compensation ordinarily resides; (c)

the employer has his registered office.

12. In the case at hand, even the copy of RC book of truck involved in the accident indicates that the owner of the truck is not resident of District Hingoli, but is resident of Rajasthan State. The accident occurred within the jurisdiction of District Wardha. Therefore, in ordinary sense, under Section 21 of the EC Act, the Commissioner, Hingoli has no jurisdiction to entertain the petition.

13. However, after going through the issues and pleadings, it emerges that though respondent no.2 specifically denied the territorial jurisdiction of the Commissioner, Hingoli and the place of residence of claimants at Kanka, District Hingoli, no issue was framed by the Commissioner regarding its territorial jurisdiction. Therefore, obviously the contention of learned counsel for appellants is to be accepted that in absence of proper issues, they did not have an opportunity to lead evidence regarding the proof of their residence at village

Kanka, District Hingoli. In the result, by allowing this appeal, the matter needs to be remanded to the Commissioner for Employees Compensation under the EC Act at Hingoli for framing proper additional issues and thereafter to reconsider the claim of the claimants afresh after giving opportunity to both the parties to lead additional evidence in support of their rival contentions.

14. Accordingly, First Appeal No. 299 of 2017 is allowed. Application No.1 of 2013 is remanded to the Commissioner for Employees Compensation under Employees Compensation Act, 1923, Hingoli, for reconsideration of entire claim afresh. The Commissioner shall frame additional issues regarding the place of residence of claimants and issue regarding territorial jurisdiction of the Commissioner to entertain the claim under the provisions of Employees Compensation Act. The Commissioner shall give full opportunity to both the parties to lead additional documentary and oral evidence before the Court in support of their

respective contentions. Thereafter, the Commissioner shall dispose of the claim after reconsidering the entire evidence afresh. The Commissioner is at liberty to recast entire issues, if it feels proper. Both the parties are directed to appear before the Commissioner for Employees Compensation under Employees Compensation Act, 1923, Hingoli on 1.1.2019. The Commissioner shall dispose of the appeal within a period of six months from the date of appearance of the parties before it. The Registrar (Judicial) to send the R. and P. back to the Court of Commissioner, at the earliest, within a period of one month, from the date of passing of this order. Parties to bear their respective costs of the appeal.

[**SUNIL K.KOTWAL, J.**]

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