

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 428 OF 2018

Balasaheb s/o Ghansham Kadam
age major, occ. agriculture
r/o Village Akoli, Tq. Basmath
Dist. Hingoli

Appellant

Versus

1. Nandabai w/o Kashinath Kadam
age 28 years, occ. household
r/o Village Akoli
Tq. Basmath, Dist. Hingoli
2. Adinath s/o Kashinath Kadam
age 10 years, occ. nil
r/o as above.
3. Jaganth s/o Kashinath Kadam
age 8 years, occ. nil
r/o as above.
4. Rukhminibai w/o Baburao Kadam
age 55 years, occ. nil
r/o as above.

Respondents

Mr. V.P. Kadam, advocate for appellant.

Mr. S.P. Katneshwarkar, advocate for respondents 1 and 4.

CORAM : M.S. SONAK, J.

DATE : 1st FEBRUARY, 2018

ORAL ORDER:

1. Although the matter was adjourned to enable the learned counsel to frame and point out the substantial question of law, if any, which arises in this appeal. However, learned counsel for the appellant has failed to do so. Instead, the learned counsel, has

made following submissions in support of the appeal.

2. Learned counsel has submitted that there is absolutely no evidence on record to indicate that the well, in which, the accident took place resulting in the demise of Kashinath was fitted with the motor pump, which, in turn, was connected to electric supply. He submits that in the absence of any such evidence, it cannot be said that Kashinath died on account of electric shock by coming in contact with the motor fitted in the well. Mr. Kadam, submits that there is also no evidence except aadhar card, to determine the precise age of deceased Kashinath. He submits that in the absence of any evidence as to the age, the Commissioner, was not justified in making any award of compensation.

3. Mr. Kadam submits that the appellant in this case had given a contract to one Mr. Kadam for deepening of the well. He submits that there is evidence that even crane was brought at the site. He submits that since the crane was brought on the site, there was no occasion for deceased Kashinath to enter into the well for the purpose of deepening the same. He submits that the case put up by the claimants is unbelievable and has been incorrectly accepted by the Commissioner.

4. Mr. Kadam submits that since the appellant had given contract to the contractor, the appellant was in no manner responsible for the manner in which the said contractor undertakes execution of the contract. He submits that there was no reason for the contractor to engage deceased Kashinath as a daily wager and, in any case, appellant, cannot be held responsible

for payment of compensation on account of demise of Kashinath.

5. None of the submissions made by Mr. Kadam spell out any substantial question of law. The submissions are basically an invitation to re-assess the evidence on record with a view to disturb the findings of fact recorded by the Commissioner. Such an exercise is not open in an appeal under section 30 of the Employees Compensation Act since, the Legislature has made it clear that such an appeal can be entertained only if it involves the substantial question of law. Since, no substantial question of law is involved and the prayer in the appeal is only to have re-look at the evidence, there is no case made out for entertainment of this appeal.

6. Even otherwise, there is ample evidence on record in support of the finding as to existence of motor in the well and death of Kashinath on account of electrification when he was in the well actually discharging the work of deepening of the well. It is pertinent to note that even criminal case has been filed against the appellant which, no doubt, is pending for trial. The claimant had deposed to the age of Kashinath and by way of corroboration, Aadhar card was relied upon. Similarly, the fact that crane was brought on the spot, does not go against the probability of Kashinath entering into the well for the purpose of work assigned to him. As regards the contract being awarded to Mr. Kadam, the Commissioner has dealt with this contention appropriately by relying upon the decisions of Delhi, Rajasthan and Bombay High Courts. Even the plea of giving contract is accepted, the appellant could not escape the liability, since, the appellant was the principal

employer. All such matters have been decided on the touch-stone of proposition of probability and thus, there is no infirmity in the view taken by the Commissioner.

7. For the aforesaid reasons, appeal is dismissed. There shall be no order as to costs.

8. The amount of compensation deposited by appellant before the Commissioner be paid to respondents-claimants, unconditionally.

(M.S. SONAK, J.)