

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 1126 OF 2017

Sajjankumar s/o Banwarilal Sharma

..Vs..

Smt. Chanda wd/o Bhurelal Verma and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.W. Almelkar, Adv. for appellant
Ms. M.B. Dodani, Adv. For R1A to RE.
Shri L. Limaye, Adv. For R-7

CORAM : NITIN W. SAMBRE, J.

DATED : 11.09.2019

Under the Employees Compensation Act,
1923 the Commissioner vide impugned judgment
passed an award dated 09.06.2017, awarded
compensation as under-

“ORDER

1) *Application is allowed in following terms -*

A) *Non-applicant nos. 1 to 3 are directed to pay the compensation amount of Rs.7,37,862.30 (Rs. Seven Lakh Thirty Seven Thousand Eight Hundred Sixty Two and Thirty Paise only) and simple interest @ 12% per annum over such amount from the date of 15.05.2015 till actual realization to the applicant nos.1 to 5 within one month from today.*

B) *Non-applicant no. 1 to 3 are jointly and severally liable to pay above referred amount to applicants.*

C) *Non-applicant nos. 1 and 2 are further directed to pay penalty i.e. 50% amount of*

Rs.7,37,862.30 (Rs. Seven Lakh Thirty Seven Thousand Eight Hundred Sixty Two and Thirty Paise only) which comes to Rs.368,931.15 (Rs. Three Lakhs Sixty Eight Thousand Nine Hundred Thirty One and Fifteen Paise only) to applicant nos. 1 to 5 within one month from today.

D) Non-applicant nos. 1 and 2 are also directed to pay cost of proceeding of Rs.3000/- (Rs. Three Thousand only) to applicant nos. 1 to 5.

2) Judgment is dictated and pronounced in open Court.”

This appeal is filed by the original respondent no. 2- labour contractor questioning the liability of compensation.

The submission of Shri Almelkar is the Commissioner has committed an error by recording finding that the appellant was employer of the deceased and as such is liable to pay the compensation. Shri Almelkar learned Counsel for the appellant would urge that the issues frame as regards the employee-employer relationship are answered contrary to the evidence and pleadings on the record. The learned Counsel would invite attention of this Court to the findings recorded by the Tribunal inferring that the appellant is an employer of the deceased based on the wage slip and the other documents.

The learned Counsel for the respondent supported the award impugned.

The case of the claimant is, the deceased was working on a Truck which was owned by the non-applicant no.1. According to them, the non-applicant no. 1 was the principal employer. The deceased Bhurelal was deputed to transport Ash by driving the offending vehicle owned by the original respondent no. 1, while transporting the said ash on 15.05.2013 the vehicle over turned resulting into to his death. It was claimed that at the time of death, age of deceased was 38 years and he was getting salary of Rs. 7,785/-. Accordingly, the compensation of Rs. 7,37,862/- was claimed.

The present appellant- original non-applicant no.2 through Exhibit- 24 resisted the claim and denied the fact that deceased was engaged by him. According to appellant, deceased was serving on the post of driver of the offending truck and was engaged in the employment by the original non-applicant no.1 who was proceeded ex-parte. As such it is claim that there was no employer - employee relationship.

The Claims Tribunal framed issue at Exhibit-O-A and the issue as regards employer - employee relationship between the appellant and the deceased-Bhurelal was answered against the appellant. Perusal of the record reveals that the deceased was given duty by the present appellant vide wage slip which is at exhibit-U28.

If the submission of Shri Almelkar learned counsel for the appellant of denial of signature on the said wage slip are appreciated, the appellant has failed to prove the said fact by adducing an evidence that the wage slip dose not bear the signature of the appellant. Since, under the Act in question onus to prove the said fact shifts on the appellant having denied the signature on the wage slip, in my opinion the Tribunal has rightly inferred against the appellant that the wage slip at Exhibit-U-28 was issued by the appellant. The appellant has neither taken out any proceedings for referring the said documents for experts opinion nor produce any such opinion so as to substantiate his claim in addition to leading oral evidence to that effect.

Apart from above, the appellant has come out with a defense that deceased-Bhurelal was in the employment of original non-applicant no.1. The said pleadings setup by the appellant was also not proved by adducing any evidence to that effect.

The fact that the appellant was working as a labour contractor with the original non-applicant no. 1 is very much accepted rather not disputed by the appellant.

Apart from above the fact that immediately after the accident, appellant visited the spot of the accident, reported the matter to the police, is formed to be a bases by the Tribunal to record findings that the applicant was the employer of deceased Bhurelal.

In the aforesaid background, considering the documents at Exhibit-U 28, wage slip, oral evidence of the claimant, failure of the appellant to prove that the deceased was in the employment of the original non-applicant no.1 rightly prevailed before the Tribunal to pass an order of award of compensation.

The employer-employee relationship between the appellant and the deceased was rightly inferred to be very much in existence on the date of the accident in questioned.

In the aforesaid background no case for interference is made out. Hence, the appeal is **dismissed**.

JUDGE