

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

FIRST APPEAL NO.1159 OF 2006

Gopal Ramnarayan Kogta,
Age : Major, Occ. Business,
r/o. Gopal Dal Mill, M.I.D.C., Jalgaon
Tq. and Dist. Jalgaon

..Appellant

Vs.

1. Smt. Shashikala Santosh Gadhe,
Age : 28 years, Occ. Household,
2. Chinku Santosh Gadhe,
Age : 5 years, Occ. Nil,
3. Sau. Kusumbai Prabhu Gadhe,
Age : 61 years, Occ. Labour,
4. Shri Ankush Prabhu Gadhe,
Age : 66 years, Occ. Labour

All r/o. Plot No.2, Supreme Colony,
M.I.D.C. Area, Jalgaon

5. Anna Bhapse,
Age :Major, Occ. Labour,
r/o. Supreme Colony, Jalgaon

..Respondents

Mrs.Chaitali Choudhary-Kutti, Advocate for appellant

Mr.M.M.Bhokarika, Advocate for respondent nos.1 and 4

Mr.V.Y.Patil, Advocate for respondent no.5

**WITH
CIVIL APPLICATION NO.4012 OF 2021
IN FIRST APPEAL NO.1159 OF 2006**

Smt. Shashikala Santosh Gadhe
and ors.

..Applicants

Vs.

Gopal Ramnarayan Kogta

..Respondents

Mr.M.M.Bhokarikar, Advocate for applicants

Mrs.Chaitali Choudhary-Kutti, Advocate for respondent no.1

Mr.V.Y.Patil, Advocate for respondent no.2

**WITH
CROSS APPEAL NO.4 OF 2018**

1. Smt. Shashikala Santosh Gadhe,
Age : 32 years, Occ. Household,
2. Chinku Santosh Gadhe,
Age : 15 years, Occ. Nil,
3. Sau. Kusumbai Prabhu Gadhe,
Age : 65 years, Occ. Labour,
4. Shri Ankush Prabhu Gadhe,
Age : 70 years, Occ. Labour

All r/o. Plot No.2, Supreme Colony,
M.I.D.C. Area, Jalgaon

(Applicant no.1 for herself and
being guardian of her
minor child applicant no.2)

..Appellants

Vs.

1. Gopal Ramnarayan Kogta,
Age : Major, Occ. Business,
r/o. Gopal Dal Mill, M.I.D.C., Jalgaon
Tq. and Dist. Jalgaon
2. Anna Bhapase,
Age : Major, Occ. Labourer,
r/o. Supreme Colony, Jalgaon ..Respondents

Mr.M.M.Bhokarikar, Advocate for appellants

Mrs.Chaitali Choudhary-Kutti, Advocate for respondent no.1

Mr.V.Y.Patil, Advocate for respondent no.2

CORAM : R.G. AVACHAT, J.

DATE : AUGUST 31, 2021

ORDER :-

The appeal (1159 of 2006) has been filed under Section 30 of Employees' Compensation Act, 1923 ("E.C. Act", for short) by employer to challenge the award directing him to pay respondent nos.1 to 4 (original claimants) a sum of Rs.1,93,752/- with interest at the rate of 6% per annum from the date of filing of the claim petition, till realisation of the amount.

2. Cross-Appeal (4 of 2018) has been filed by the original claimants for enhancement of the rate of interest awarded by learned Commissioner, on the amount of compensation and for imposing penalty on the employer on account of failure to pay compensation when it fell due.

FACTS :-

3. For the sake of convenience, the parties to the appeals are referred to as employer and claimants. The claimants are legal representatives of the deceased Santosh. The employer has been running a Dal Mill at M.I.D.C., Jalgaon. The deceased Santosh was engaged by him as a Hamal/employee for loading and unloading heavy Dal bags. It so happened that on 28.06.2000, deceased Santosh was unloading such bags in a store-well. He slipped and the Dal bags on his back fell on his person. As a result, he suffered multiple injuries. He was rushed to the hospital for treatment. He, however, succumbed to the injuries on 19.07.2000. The claimants, therefore, preferred the application for

compensation. Learned Commissioner, after having found the deceased to have been engaged on a monthly pay of Rs.1,800/- (Rs.60 per day) awarded compensation.

4. It is the case of the employer that no employer-employee relationship did exist between him and the deceased. Anna Bhapse (respondent no.2) was a labour contractor. He would supply the employer, the employees as and when required. On the fateful day, deceased – Santosh was not employed for him. He still spent little over Rs.1,70,000/- for medical treatment of the deceased Santosh on humanitarian grounds.

5. Mrs.Chaitali Kutti, learned counsel for the employer, would submit that learned Commissioner did not frame issue regarding employer-employee relationship. There was no evidence to indicate the deceased to have been serving in the Dal Mill on the given day. The employees' attendance register was produced before learned Commissioner. Learned counsel took me through the oral evidence in the matter to ultimately

urge for setting aside the impugned award. She placed reliance on the following three authorities:-

(i) Dina Nath Vs. National Fertilizers Ltd.,
AIR 1992 SC 457;

(ii) Lakshminarayana Shetty Vs. Shantha
and anr., (2003) 9 SCC 190;

(iii) Dockendale Shipping, Bombay and anr.
Vs. Shri.Jevanbhai Ramji Tandel, 2006(3)
All.M.R. 141.

6. Mr.M.M.Bhokarikar, learned counsel for the claimants, on the other hand, relied on the definition of "employer" under the E.C. Act. He took me through the evidence in the matter and ultimately, urged for enhancement of rate of interest and imposing penalty.

7. The substantial question of law involved in the appeal is, whether the employer-employee relationship has been established.

Issue no.1 framed by learned Commissioner is as under:-

"1. Do the applicants prove that deceased Santosh Ankush Gadhe met with an accident arising out of and during the course of his employment with opponent nos.1 and 2 on 19.07.2000 ?

The phraseology of the issue, undoubtedly, indicates that the issue regarding employer-employee relationship between the employer and deceased, was the matter directly and substantially in issue before learned Commissioner.

8. Admittedly, on 28.06.2000, deceased Santosh was engaged in unloading of Dal bags in the Dal Mill of the employer. The deceased slipped and Dal bag on his back fell on his person. He suffered multiple injuries and ultimately, succumbed thereto. The employer received a notice issued for and on behalf of the claimants demanding compensation. He did not respond to the notice. The Cashier working with the employer tendered in evidence a photocopy of voucher indicating payment of wages to original respondent no.2, the so called labour contractor. Said voucher has not been duly

proved. There is no evidence to indicate that original respondent no.2 was a registered labour contractor. It is true that the father of the deceased Santosh admitted that original respondent no.2 would pay the deceased Rs.60/- per day towards wages. He, however, categorically denied that the deceased was working with the employer through the labour contractor.

9. Admittedly, deceased Santosh died as a result of the injuries suffered in a mishap occurred on the premises of the employer. There is no evidence to indicate that the deceased was working through the labour contractor. Even if the case of the employer is assumed to be true, the definition of term "employer" appearing in Section 2(e) of the E.C. Act, does indicate that the employee working through a labour contractor would be employee of the employer for whom he was working. The definition of "employer" reads thus:-

2(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal

representative of a deceased employer, and, when the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him;

10. I have carefully gone through the authorities relied on by learned counsel for the employer, to find to have no application to the facts and circumstances of the case. The judgment in the case of Lakshminarayana Shetty's case (supra) indicates that the deceased therein was engaged for painting the house and while doing said work, unfortunately, he fell down and died. On facts, no employer-employee relationship was established.

The facts of Dina Nath's case (supra) pertain to Contract Labour (Regulation and Abolition) Act, 1970. The issue involved therein was no way concerned with grant of compensation under the E.C. Act.

The facts of Dockendale Shipping's case (supra) indicate that the deceased therein died of cerebral stroke and

hemiplegia while on sea. On facts, the nexus between the injuries and the nature of work was not proved.

11. In the case in hand, learned Commissioner, on appreciating the evidence in the case, has rightly held the employer-employee relationship between the employer and the deceased Santosh to have been proved. This Court did not find any reason to interfere with the findings of facts. On consideration of the deceased to have been receiving Rs.60/- per day and his age, learned Commissioner rightly quantified the amount of compensation.

12. Section Section 4A of the E.C. Act, reads thus:-

4A. Compensation to be paid when due and penalty for default-

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the

Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Sub-clause (a) above indicates the employer to have been under statutory obligation to pay interest at the rate of 12% per annum on the amount of arrears of compensation. Learned Commissioner has, however, awarded interest at the rate of 6% per annum. The same, therefore, needs to be enhanced to 12% per annum.

13. The amount of compensation fell due on expiry of one month from the date of death of the deceased Santosh. The employer did not pay the amount of compensation until the impugned award was passed. Close reading of the claim application, however, indicates that there are no averments to make out a case for directing the employer to pay further sum by way of penalty. Proviso to Section 4A of the E.C. Act, undoubtedly, indicates that the order for payment of penalty shall not be passed without giving a reasonable opportunity to the employer to show cause as to why it should not be passed.

14. The proceedings before learned Commissioner dates back to year 2000. It is reiterated that there are no averments

in the claim application so as to make out a case for issuing direction to pay further sum by way of penalty. It is only in the prayer clause of the claim application, it has been urged that until entire amount of compensation is received, the same shall be saddled with interest and penalty. For better appreciation, relevant prayer clause is reproduced below.

क) अर्जदारांना सदर रक्कम ही संपूर्णतः वसूल होई पावेतो त्यावर योग्य तो दंड व व्याज सामनेवाला कडून वैयक्तीकरित्या व संयुक्तीकरणे वसूल करून देववावा असा हुकूम व्हावा ही विनंती.

15. Reading of the aforesaid clause, by no stretch of imagination, lead to infer the claimants to have had urged for direction to the employer to pay further sum towards penalty. For want of pleadings and proof, the prayer of learned counsel for the claimants cannot be accepted.

16. For the foregoing reasons, the First Appeal fails and the Cross Appeal partly succeeds. Hence, the following order:-

(i) First Appeal No.1159 of 2006 stands dismissed.
Pending Civil Application stands disposed of.

- (ii) Cross Appeal No.4 of 2018 is partly allowed.
- (iii) The impugned award is modified to the extent of rate of interest. The employer is directed to pay interest at the rate of 12% per annum on the amount of compensation of Rs.1,93,752/- from the date of the claim application to the date of actual payment.
- (iv) The amount of compensation deposited either in this Court or with learned Commissioner under the E.C. Act, be paid to the claimants along with the interest accrued thereon.

[R.G. AVACHAT, J.]