

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 833 OF 2018

Mohd. Pazru @ Mohd. Ajharuddin Majid Alam Ansari ...Appellant
vs.
Mahavir Raos and Infrastructure Pvt.Ltd. & Anr. ...Respondents

Mr.T.J. Mendon for Appellant.
Ms.Poonam Mital for Respondent No.2.

CORAM : BHARATI DANGRE, J.

DATED : 12 OCTOBER 2021

P.C. :

. Heard learned Counsel for the Appellant. Heard Ms.Poonam Mital, Counsel for Respondent No.2, who is permitted to file vakalatnama.

2. The first appeal invokes a short question about the jurisdiction of the Commissioner for Employees Compensation and Judge, 5th Labour Court at Mumbai. On an application filed by the Appellant, Mohd. Pazru @ Mohd. Ajharuddin Majid Alam Ansari, seeking claim for compensation in the backdrop of an accident, which took place at the worksite of Respondent No.1 on 1 October 2013, in which he sustained injuries relating to loss of 100% earning capacity, the Insurance company, which filed its response, took a stand that the Applicant is neither in employment of the Party No.1 nor he has been employed. However, as far as employer, Party No.1, is concerned, he never state on defence that the Applicant could not be a workman within a meaning of Section 2(n) of the Employees Compensation Act or that he was not engaged by them.

3. The Commissioner for Employees Compensation and Judge, 5th Labour Court, however, did not touch the merits of the matter and stalled the proceedings on the pretext that he has no territorial jurisdiction to try and entertain the application. Unfortunately, the learned Judge has failed to advert his attention to the entire section. In fact, he has not even bothered to have a glance at it and the section, which contemplates several contingencies, which would determine the jurisdiction of the court, is completely ignored. By relying upon clause (a) of Sub-section (1) of Section 21, which confer jurisdiction upon the commissioner for the area, in which the accident took place, the learned Judge record that since the accident had occurred in Navi Mumbai, it could be Labour Court at Thane which is empowered to exercise jurisdiction and he cannot exercise jurisdiction and entertain the application. The appeal persuaded him by relying upon the Supreme Court and High Court decisions are cursorily turned out by saying that they are not applicable. Had the learned judge read Section 21 Sub-section (1) in totality, the said conclusion should not be arrived at.

Section 21(1)(a) reads thus :

“21. Venue of proceeding and transfer.-(1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which--

(a) the accident took place which resulted in the injury;

or

(b) the employee or in case of his death, the dependant claiming the compensation ordinarily resides; or

(c) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a employee in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.”

4. The commissioner is empowered to exercise jurisdiction, in whose territorial jurisdiction the accident took place and which resulted into an injury. Proceedings can also be instituted before the commissioner, who has jurisdiction over an area where either the employee or in case of his death, the dependent claiming the compensation ordinarily resides or even the employer has his registered office. By relying upon clause (b) and (c), the proceedings are rightly maintainable before the Labour Court at Mumbai, since the employee is resident of Santacruz, Mumbai and not only this, the office of Respondent no.1 is located in Santacruz, Mumbai. The aforesaid facts clearly permit exercise of jurisdiction of the learned Labour Court at Mumbai. Necessarily, the impugned order dismissing the appeal on the ground of absence of jurisdiction in the court deserves to be set aside.

5. The impugned order is, accordingly, set aside and Application (WCA) No. 222/C-4 of 2014 is restored to file of Commissioner for Employees Compensation and Judge, 5th Labour Court, Mumbai. The application is pending since 2014, the learned Judge is expected to

expeditiously dispose of the said application and in any case, not later than three months from today, since learned Counsel for the Appellant has specifically stated that the evidence was also recorded in the proceedings but the learned Judge did not even make a reference to the same and oust to the parties on the basis of territorial jurisdiction.

6. The first appeal is disposed of.

(SMT. BHARATI DANGRE, J.)