

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 520 OF 2014

Karamchand Shamaram Thakur & Anr .. Appellants
Versus
Kaurchand B. Jaiswal & Anr .. Respondents

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Mr.T.J. Mendon for the appellants
Ms.Poonam Mittal for respondent no.2.

CORAM: BHARATI DANGRE, J.
RESERVED ON : 28th OCTOBER 2021.
PRONOUNCED : 14th DECEMBER 2021.

JUDGMENT :-

1 The Appeal is filed by the appellants, being aggrieved by the order passed by the Commissioner for Employees Compensation and Judge, 9th Labour Court, Mumbai on 26th September 2019 on an application filed vide Application (WCA) No.329/B-75 of 2004. Application was filed for compensation, for the death of their son deceased Sanjivkumar Karamchand Thakur, who was employed as a cleaner on the vehicle belonging to respondent no.1 Kaurchand Jaiswal which met with an accident on 20th June 2003 at Hariya, Atul Police Station, Valsad in Gujarat while the deceased was on duty. The accident proved to be fatal and he succumbed to the injuries and the claim is staked by his parents claiming compensation under the Workmen

Compensation Act, 1923. Since the vehicle in question was insured with the New India Assurance Co. Ltd, it was impleaded as respondent no.2. On the claim being rejected, the present Appeal is instituted, pleading that the order passed by the Commissioner is perverse, bad-in-law and as a statutory authority constituted, under the statute, it has failed to safeguard the interest of the employee who had sustained injuries during the course of his employment and as a consequence, his family has been denied the benefit of compensation by recording a perverse finding, which is unsustainable.

2 On 24th June 2014, notice was issued to the respondents with an indication that the Appeal shall be heard finally on the returnable date. The Record and Proceedings was also called for.

Notice issued to the respondent no.1 returned unserved with the bailiff's remark to the following effect :

"Nobody knows about the respondent at given address"

Respondent no.1 had never put his appearance even before the Commissioner.

On publication, notice being issued against respondent no.1 vide the Registry of this Court on 6th April_2018 it was recorded that all the respondents are duly served. Since the R & P was also received and the respondent no.2 is represented by Advocate Poonam Mittal, the Appeal is taken up for final

hearing, on formulation of the following substantial question of law.

“Whether the impugned judgment/order passed by the Commissioner suffer from perversity, since it fail to appreciate the evidence brought before him and has failed to consider the relevant evidence on record”

3 The deceased is one Sanjeev Kumar Karamchand Thakur who was employed as a cleaner on vehicle GJ-03-T-2012 which met with an accident on 20th June 2003 at Hariya, Atul Police Station, Valsad (Gujarat).

In the claim instituted on 17th November 2004, it is averred that their son at the time of the accident, was aged 21 years and he was paid salary of Rs.4,000/- per month by his employer, Kaurchand Jaiswal. It is specifically stated in the application that when they filed a claim for compensation, the opposite party i.e. respondent no.1 assured to settle the compensation from Insurance Company and deposit the amount, however, since inspite of repeated demands, neither the opposite party or the Insurance Company has paid any compensation, hence, they claim compensation of Rs.4,45,420/- along with interest @ 12% p.a from the date of accident till realization and penalty.

4 During the course of proceedings, on the notice being issued, the opponent party no.2 filed written statement through Divisional Manager on 19th January 2013, where it is denied that

the deceased was ever working as cleaner with Kaurchand Jaiswal. Claim is further denied on the ground, that no documentary evidence is produced to support of claim that accident had occurred during the course of employment. Liability was denied by pleading that insurer is not liable to indemnify the opposite party in absence of any contract between him and the insurer. Since the respondent no.1 did not put appearance, the Commissioner permitted paper publication and accordingly, the notice came to be published in the daily newspaper of Western Times on 13th October 2010.

5 The appellant had produced the following documents before the Commissioner and they are listed as under :-

- (1) Xerox copy of police papers like FIR and Panchnama issued by Atul Police Sation, District Valsad
- (2) Xerox copy of Post Mortem Report of deceased Sanjiv Karamchand Thakur.
- (3) Original certified copy of Atul Police Station giving receipt of the dead body.
- (4) Xerox copy of the driving licence of the driver of vehicle no.63-03-T-2012
- (5) Xerox copy of form of certificate of registration of vehicle No.GJ-03-T-2012
- (6) Xerox copy of policy of New India Assurance Co.Ltd cover/ its validity at the time of accident.

6 The claimant filed his affidavit in lieu of evidence where he reiterated the demand of compensation, to be paid jointly by opposite party no.1 and the insurance company to the tune of Rs.4,45,420/-, along with the interest of 12% from the

date of accident till its realization. Since the proceedings proceeded ex-parte against the party no.1, the claimant no.1 was cross-examined by the counsel for the insurer. The claimant referred to the list of documents produced Exhibit-U-11 which included the police papers, vehicle papers, insurance policy, post mortem report of the primary health centre, Hariya, District, Valsad. In the cross-examination, at the instance of the insurer, the claimant no.1 admitted that he is unable to produce any document about employment of his son with the party no.1, since he had given all the papers to his employer to claim compensation. He admitted that his son was employed for about four months with the party no.1, before the accident and he denied the suggestion that there was no employer-employee relationship between his son and the opposite party no.1.

7 Pertinent to note that the documents which the claimants had tendered were scribed in Gujarati language and this included the FIR and spot panchnama. Post Mortem report, certified copy of the receipt issued by the Atul Police Station handing over the body of the deceased. The said documents were placed before the Court along with an affidavit filed by one Jayant C. Parekh working with M/s. Mahendra Xerox having head office at CST, Mumbai, who in his affidavit dated 24th September 2013 depose that he had translated the Gujarati documents to English, in Case no. (WCA) 329/B-75/2004 before the 9th Labour Court,

Mumbai (total 1 to 10) and the translation of the documents is true and correct.

One of the translated documents, is the copy of the FIR No.48/2003 registered on 20/6/2003 at about 10.45 p.m, invoking Section 279, 304, 327 IPC and Section 177, 184 of the Motor Vehicles Act. The place of offence is Mauje Sugar factory, Parnera, Paldi, National Highway No.8 and the person named as accused is Truck Driver Rampravesh Singh Jaynath Singh Chaudhary, The FIR is lodged by him stating that he was working as driver with the transporter since last four years on monthly salary of Rs.1,000/- and he is holding a driving licence issued by RTO. On 18/6/2003, he loaded his truck No. GJ-3-T-2012 at Gandhi Nagar and commenced his journey. On 26/6/2003, at around 7'O clock, while crossing Mauja Parneri Pardi Sugar Factory, his truck rammed into another big truck being driven ahead on the river side and since it was raining heavily at that time, he did not notice the other vehicle on the road. His truck was damaged extensively and he was squeezed in the cabin, but somehow, he managed to come out, but the cleaner who was sleeping on the back side of the driver's seat, got crushed, as his head was compressed and he died on the spot. He did not notice the number of the other truck, since he was very scared looking at the condition of his cleaner. He admitted that his truck was being driven roughly and negligently, resulting in the accident. Hence, the complainant himself was named as

accused in the FIR.

8 Another document which was translated, is the panchnama which came to be recorded on registration of the FIR No. 48 of 2003. The panchnama which was drawn on 20th June 2003 between the 12.15 hrs to 12.45 hrs and which form part of the investigation, corroborate the accident and death of the cleaner. The panchnama focus on the condition of the vehicle, which describe that the cabin is dented inwards, more on cleaner side. The bonnet and two engines are also recorded to be dented.

During investigation, an inquest panchnama of the dead body is also conducted, which ascertain the condition of the dead body, which has been identified to be of one Sanjeev Kumar Thakur, resident of Nav Shehra Taluka Dehra, District Kangda, Himachal Pradesh. The body is identified by one Kuldip Singh Susarchand Rana, resident of Dehra, Nav Shehara, District Kangda, Himachal Pradesh. The panchnama record that the age of the deceased person seem to be approximately 25 years and he died on sustaining injuries in the Motor Accident though exact cause of death can be ascertained on undertaking the postmortem. The post mortem report was also brought on record, which identified the dead body of Sanjeev Kumar Karamchand Thakur and the pm report certify that the post mortem was conducted on the dead body of Sanjeev Karamchand Thakur whose body was brought by PSI Atul Police Station from the place of incident,

being Pardi Sugar Factory, National Highway No.8. The body was identified by Kuldeep Singh Susarchand Rana. In the post mortem report, qua column no.5, it is mentioned as under :-

"Death due to vehicular accidental injuries on 20th June 2003 at 7.00 a.m".

In the report, the age of the deceased is given as 25 years and it refer to various injuries in Column No.17 and 19 and cause of death is ascertained as 'Hemorrhagic shock due to injury to body organ - brain head injury"

9 The aforesaid documents were placed before the learned Commissioner along with one another document, which prompted the learned Commissioner to deny the compensation to the appellants. This document is in form of a receipt for handing over the dead body and the translation of the said document was placed before the learned Judge. It would be appropriate to reproduce the said documents, as translated and placed before the Commissioner.

RECEIPT FOR HANDING OVER THE DEAD BODY

"My name is Surjit Singh Parsindhram Thakor, aged 35 years, occupation:driver, residing at, original native of Himachal Pradesh, presently residing at Post: Nav Shehra, Taluka Dehra, District Kangda, Himachal Pradesh

I hereby acknowledge that, the deed body of Kuldip Singh Shri Susarchand Rana of Nav Shehra, Taluka Dehra, District Kangda, Himachal Pradesh, in the matter of the Atul Police Station FIR No.48/2003 registered

under sections 279, 337, 304(a) of the IPC, and under sections 177, 184 of the M.V. Act, has been handed over to me by the Atul Police Station, and I have taken possession of the said dead body, in witness whereof I have set and subscribed my signature hereunder”

10 Based on this document, the learned Commissioner disputed the whole incident as it created a doubt and the following observation is made in para 11.

“11 Xerox copy of postmortem report is also furnished wherein the name of dead body is shown as Sanjiv Karamchand Thakur by specifically mentioning in it that dead body was identified by person viz. Kuldip Singh Susarchand Rana. But to the height of the facts receiver of dead body from police station in crime no. 48/03 is shown to be Surjit Singh Thakore, whose description appears as a driver by specifically mentioning in it that then at the time he had received the dead body of the person by name Kuldip Singh Susarchand Rana, resident of Nav Shehra, Tal. Dehra, Dist. Kangda, Himachal Pradesh, who was a victim in crime no. 48/03. Nowhere name of Surjit Singh Thakore appears as a driver in the police report, which came to be lodged by Rampravesh Singh. Even there is no reference of any second driver then present in the truck at the relevant time of incident. Admittedly, it was crime no.48/03 which was registered in concern with said action. Being so question arises as to how and in what way the person by name Kuldip Singh Susarchand Rana who is shown to have identified Sanjiv Karamchand Thakore as a dead body in crime no. 48/03, himself is referred as a dead body in the document "received for handing over the dead body", which forms the part and parcel of the document of inquest panchnama. Nowhere name of Surjit Singh

Thakore appears in police report. Kuldip Singh who is said to have identified deceased as Sanjiv Thakore himself is a dead body, which was received by said Surjit Singh as mentioned in the receipt, wherein there finds no reference of the name of Rampravesh Singh, who is shown to have lodged police report on the basis of which crime no. 48/03 was registered. These factual aspects disclosing from the documents raises a suspicious question about the identity of the person, who is said to have expired in an accident is concerned with which crime no.48/03 at Atul Police Station was registered on dt.20.06.2003”.

It is this finding in the judgment which has resulted in rejection of the claim filed by the appellants and the Appeal is being argued on the substantial question of law to the effect of not consideration of the documents placed on record and rendering of an erroneous finding without adverting to the relevant material, resulting in perversity.

11 Pertinent to note that the documents in form of the police papers, Inquest panchnama, spot panchnama are in Gujarati and along with an affidavit of true translation, was placed before the learned Judge. Fortunately, the post mortem report is in English where the name of the dead person who was brought by PSI Atul Police Station on 20th June 2003 on his death in vehicular accident. The corpse of Sanjeev K. Thakur was brought for post mortem by the police constable attached to Atul Police Station and it is identified by Kuldip Singh Susarchand Rana.

Now, turning to the FIR lodged by the truck driver Rampravesh Singh Chaudhary, who gave the gory details of the accident of the truck, which he was driving on 20th June 2003 at about 7 O'clock and the spot of accident being described as Mauja Parmeri Pardi Sugar factory and the information given by him to the police station is about the cleaner who was present in the truck, who died on the spot. The panchnama of the spot drawn during the course of investigation mention about a body being found in the said truck. Obviously, this body was subjected to Inquest and it is identified by Kuldip Singh Shri Susarchand Rana to be of a person from his village being Sanjay K. Thakur. Kuldip Singh identified his body as they are residents of the same village. So far as so good, the confusion in the mind of the learned Judge arose on account of the receipt which he has relied upon and to which I had made a reference as above. The said receipt is translated before him and the learned counsel Mr.Mendon has assertively stated that it is an incorrect translation and therefore, he has placed on record a correct translation of the said receipt and along with an affidavit filed by a practising Advocate Mr.Naveen C. Sheth, who on affidavit state that he is conversant with Gujarati language and English language and he has translated the receipt of handing over the dead body from Gujarati – English and he certify that the translation is true and correct. The said affidavit dated 27th October 2021 tendered across the bar is taken on record along with the translation by the

said Advocate. True and correct translation, according to Mr.Mendon, now reads as under :-

RECEIPT FOR HANDING OVER THE DEAD BODY

My name is Surjit Singh Parsindhram Thakor, aged 35 years, occupation: driver, residing at, originally native of Himachal Pradesh, village Riyalphad, at post: Nav Shehra, Taluka Dehra, District Kangda, Himachal Pradesh.

I hereby acknowledge that, the dead body of Sanjeev Karamchand Thakor aged 25 years resident of Himachal Pradesh, village Riyalphad, at post: Nav Shehra, Taluka Dehra, District Kangda, Himachal Pradesh, is my cousin. In the matter of Atul Police Station F.I.R. No. 48/2003, registered under sections 279, 337, 304(a) of the I.P.C. and under sections 177, 184 of the M.V. Act, the body was taken to PHC and P.M. was done in Dariya PHC and the body has been handed over to me by Atul Police Station, and I have taken possession of the said dead body, therefore I have signed this receipt.

The receipt now reveal that one Surjit Singh Parsindhram Thakor, native of Himachal Pradesh at Post Nav Shehra, District Kangda, Himachal Pradesh, had received a dead body of Sanjivkumar Thakur, resident of Himachal Pradesh and he further acknowledged that the deceased is his cousin. He also state that FIR No. 48/2013 was registered with Atul Police Station and the body was taken to the PHC where post mortem was done and thereafter, the body was handed over to him by Atul Police Station and he has taken possession of the said body and sign the receipt.

The picture now becomes clear. The learned Commissioner was misled by incorrect translation and even if the original

document is in gujarati is perused, without following the language with the naked eye, one can see the name of Surjeet Singh Parsindhram Thakor in the first part of the receipt, where the name of the deceased in the subsequent portion can be read as 'Sanjeevkumar Thakur'. It is on account of the incorrect translation of the said documents. The Commissioner, Labour Court has arrived at an erroneous finding and outrightly rejected claim of the claimants on account of the confusion that occurred in his mind. In paragraph no.13, the learned Judge record that no documents of age and wages are made available.

12 The aforesaid discrepancy being now clarified and since it is identified that the dead person was Sanjivkumar Karamchand Thakur, the observation of the Commissioner that it is impossible to ascertain as to who had met with an accident and succumbed to the injuries, is unsustainable. It is on this very ground the Application is dismissed with costs.

13 Since the Appeal involve a substantial question of law as regards the perversity in the impugned order, on account of the non-appreciation of evidence brought on record, the Appeal deserve to be entertained and the question of law is answered to the effect that the impugned order passed by the Commissioner suffer from perversity since it misread the documents produced in evidence.

14 The identity of the deceased Sanjivkumar Karamchand Thakur now being established, I deem it appropriate to remand the matter to the Commissioner for its determination about the quantum of compensation. The claimant Karamchand Thakur has already entered into the witness box and deposed that the age of his son was 21 years and his salary was Rs.4,000/-. The said assertion being not contradicted by the employer who has entered into the witness box through the supervisor who has not denied the amount of wages or the relationship of employer – employee, and the age of the deceased, the contention of the claimant goes unchallenged. Taking it as an admitted fact, the Commissioner for Workman's Compensation Act, Mumbai shall determine the quantum of compensation within a period of four weeks from today. The claimants shall be informed about the entitlement of compensation to them along with interest and penalty and the same shall be disbursed to them forthwith.

With the matter being remanded to the Commissioner for computing the amount of compensation to which the claimants are entitled, First Appeal stands allowed by answering the substantial question of law, in favour of the appellants.

SMT. BHARATI DANGRE, J