

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 82 OF 2000

WITH

CIVIL APPLICATION NO. 1469 OF 2000

Kerba Gangaram Kamble
Age : 46 years, occ : nil
R/o Kingaon, Tal. Ahmedpur,
District Latur.

Appellant
(original applicant)

Versus

Gangaram Dnyanoba Shrungare
(Died) Through Legal Heirs

1. Rangubai wd/o Gangaram Shrungare
Age : 78 years, occ : household
2. Sudhakar Gangaram Shrungare
Age : 48 years, occ : agri.,
3. Shriram Gyanoba Shrungare
Age : 61 years, occ : agri.,
4. Vaijanath Gyanoba Shrungare
Age : 48 years, occ : agri.,

Respondent Nos.1 to 4 r/o
Kingaon, Taluka Ahmedpur,
District Latur.

5. Sushhila w/o Bhanudas Mhetre
Age :28 years,occ : household
R/o Khandali, Taluka Ahmedpur,
District Latur.
6. Sunita @ Mahananda Maroti Thorwat
Age : 38 years, occ : household
R/o Rampur, Taluka Loha,
District Nanded.
7. Atmaram Gyanoba Shrungare
Age : 63 years, occ : pensioner
R/o Hudco Chowk, Near Sai
Baba Kaman, Kawatha,
Nanded.

8. Madhukar Gyanoba Shrungare
Age : 55 years, occ : agri.,
R/o Kingaon, Taluka Ahmedpur,
District Latur.

Respondents

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Mr. B.R. Kedar, Advocate for the appellant.

Mr. U.P. Giri, Advocate for respondent Nos. 1 to 3 and 5 to 7.

Mr. N.D. Kendre, Advocate for respondent No.4.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 16.01.2023

Judgment pronounced on : 28.03.2023

Judgment :

1. The appellant who is the original applicant - claimant has challenged the judgment and order dated 08.12.1999 in WCA No. 22/1995 passed by the Commissioner for Workmen's Compensation Act, 1923 (for short, the "Act") i.e. Judge, Labour Court, Latur (hereinafter referred to as "the learned Commissioner"). Under the impugned judgment and order, the claim of the appellant for getting compensation under the said Act has been dismissed.

2. The background facts can be summarised as under :

The appellant was working as a Thresher Machine Operator on the machine of original respondent Gangaram Dnyanoba Shrungare on daily wages of Rs. 40/-. On 21.01.1994 while operating the said thresher machine, the

appellant met with an accident wherein his right hand got crushed in the said machine and resultantly got amputated below the elbow. Due to such accident, the appellant became permanently disabled to the extent of 65% and lost his 100% working capacity. Thereafter on 06.03.1995 the appellant issued notice to original respondent Gangaram through Registered Post A.D. calling upon him to pay the compensation. However, the respondent refused the said notice. On the such refusal the appellant thereafter was constrained to file WCA No. 22/1995 before the learned Commissioner on 15.04.1995. Initially the respondent, despite service, remained absent, and therefore, the said application was heard ex parte and the learned Commissioner on 09.11.1995 granted compensation by directing the respondent to pay an amount of Rs. 86,192/-. Thereafter on 11.12.1995 the appellant preferred execution proceeding, however, on 16.07.1996 the respondent filed an application for setting aside the ex parte decree which was allowed on 18.10.1996. Then the respondent filed written statement on record and the application was once again heard by the learned Commissioner and on 08.12.1999 the claim of the appellant under the said Act was dismissed on the ground that the appellant could not establish the employee -

employer relationship between himself and the original respondent Gangaram. Hence, this appeal.

3. While dismissing the application of the appellant, the learned Commissioner found that the original respondent Gangaram never owned any thresher machine, and therefore, the appellant was not employed by him and hence it was ultimately held that the accident of the appellant did not arise out of and in the course of his employment with the respondent.

4. During the pendency of this appeal, the original respondent Gangaram died and the appellant brought on record his legal representatives Nos.1, 2, 5 and 6 alongwith his four brothers contending that the original respondent Gangaram was the Karta of joint family of the present respondents and though the thresher machine was in the name of respondent No.4 Vaijanath, but it was in fact joint family property.

5. Learned Counsel for the appellant, in addition to the submissions at bar, also filed written argument. According to him, though the thresher machine was owned by present respondent No.4, but it was on behalf of business of

the joint family consisting the original respondent and present respondent Nos.3, 4, 7 and 8. Therefore though the present respondent No.4 was not made party, but since it was Hindu joint family headed by original respondent as Karta, the respondents are liable to pay compensation to the appellant-claimant. He further submits that the appellant was workman and employee of the respondent within the meaning of Section 2 (n) (ii), Scheduled II, Entry (XLV) of the said Act. He further pointed out that the learned Commissioner wrongly ignored the evidence of appellant and his witness and erred in believing the evidence of respondent. According to him, the learned Commissioner did not consider the admission given by the witnesses of the respondent and wrongly held that the original respondent Gangaram was not the owner of thresher machine. Besides these submissions, the learned Counsel for the appellant relied on the following judgments :

- (I) Bharat Singh vs Bhagirathi, 1966 AIR (SC) 405*
- (ii) Kedarnath Kanoria vs Khaitam Sons and Co. AIR 1959 Cal 368*
- (iii) Mackinnon Mackenzie & Co. vs Ibrahim Mahmmmed Issak 1970 AIR (SC) 1906*
- (iv) Pradeep Naik vs Yesso Tulshidas Naik in Appeal under Workmen's Compensation Act No. 3 of 2021, decided on 22.07.2009*

- (v) *Pratap Narain Singh Deo vs Srinivas Sabata*
1976 AIR (SC) 222
- (vi) *Hyderabad Steen Tubes Pvt Ltd vs Aktar Begum & ors*
1996 LAB. I.C. 1177
- (vii) *Oriental Insurance Co. Ltd. vs Siby George in CA*
No.5666 of 2012 (Arising out of SLP (C) No.9516 of 2010,
dated 31.07.2012.
- (viii) *Bajaj Auto Limited Employees' Consumer's Co-operative*
Society Ltd. Aurangabad vs Radhakishan Bhaguji Raut
(Deceased) LRs & others, in First Appeal No. 54 of 1997
decided on 22.04.2014
- (ix) *Mahindra Gujrat Tractor Ltd. vs Shabana w/o Abdul*
Rauf Pathan & others, in First Appeal No. 280 of 2007,
decided on 08.04.2010

6. On the contrary, learned Counsel for respondent Nos. 1 to 3 and 5 to 8 strongly opposed the submissions made on behalf of the appellant by filing written notes of argument and supported the impugned judgment.

7. On the other hand, learned Counsel for respondent No.4 also resisted the appeal on the ground that the appellant could not establish employee - employer relationship between himself and original respondent, especially when the original respondent Gangaram had never owned thresher machine, but it was owned by his brother Vaijanath. There was no existence of joint family as Vaijanath had already separated from his brother long back. Learned

Counsel for respondent No.4 has also filed written notes of arguments according to which the appeal is filed by the appellant only to harass the present respondent No.4 Vaijanath, who was not party before the learned Commissioner. Further it is submitted that the appellant has come out with entire new story in appeal for the first time about the existence of so called joint family business which is not at all permissible. With these submissions, the learned Counsel for respondent No.4 prayed for dismissal of the appeal. He also placed reliance on the following judgments :

- (i) Central Mine Planning and Design Institute Ltd vs Ramu Pasi and another, (2006) 1 SCC 377*
- (ii) Om Prakash Batish Vs Ranjit@ Ranbir Kaur and others (2008) 12 SCC 212*
- (iii) Central Mine Planning and Design Institute Ltd vs Ramu Pasi and another, 2004 (4) Mh.L.J. 869*
- (iv) Oriental Insurance Co. Ltd. vs Sorumai Gogoi & ors (2008)4 SCC 572*
- (v) Jyothi Ademma vs Plant Engineer, Nellore and another (2006) 5 SCC 513*
- (vi) Shakuntala Chandrakant Shreshti vs Prabhakar Maruti Garvali and another, (2007) 11 SCC 668*
- (vii) Mackinnon Mackenzie and Co. vs Ibrahim Mohommad Issak, 1971 Mh.L.J. 395*
- (viii) North East Karnataka Road Transport Corporation vs Sujatha, (2019) 11 SCC 514*

8. With the assistance of respective learned Counsel for the rival contesting parties, I have gone through the impugned judgment alongwith the record and proceeding of WCA No. 22/1995. Also perused the written arguments filed by learned Counsel for the rival parties alongwith citations produced by them.

9. There is no dispute that on the fateful day i.e. on 21.01.1994 the appellant met with an accident and lost his right hand as it was crushed in the thresher machine and consequently amputated below the elbow. However, the evidence on record indicates that the said thresher machine was owned by Vaijanath Shrungare i.e. the present respondent No.4 and the real brother of original respondent Gangaram. Though the appellant had claimed that the said thresher machine was owned by Gangaram and he was employed by Gangaram for operating the said thresher machine, but during the trial it was revealed that the said machine was owned by present respondent No.4 Vaijanath who was not at all party to the original proceeding before the learned Commissioner.

10. It is the case of the appellant-applicant before the learned Commissioner that the original respondent

Gangaram had appointed him to run the thresher machine. Further, the notice sent by appellant also indicates that Gangaram had owned that thresher machine (मळणी यंत्र) and on 21.01.1994 Gangaram had given the said machine to the original opponent No.2 Wasudeo Mundhe (who was subsequently deleted from the original proceeding) on rent for separating the sunflower crop. However, contrary to his case in the lower Court, the appellant is now coming with a case that the original respondent Gangaram and his brother including respondent No.4 were from Hindu undivided family and the thresher machine was owned for the business of said Hindu undivided family. It is extremely important to note that respondent No.4 Vaijanath was never part of the proceeding before the learned Tribunal and there was no pleading of the appellant that Gangaram held that thresher machine on behalf of joint family business. Apart from that, the sale deed dated 01.10.1992 produced under Exh. C-12 also indicated that Vaijanath had purchased the said thresher machine from one Shriram Vithalrao Phad and there is no reference in it whether the said machine was purchased in the name of Vaijanath in respect of joint family business of original respondent Gangaram.

11. The learned Counsel for the appellant heavily relied on the judgment of Calcutta High Court in the case of ***Kedarnath Kanoria vs Khaitam Sons and Co.*** (supra), wherein it is observed as follows :

“The karta of a joint family sued in a representative character in respect of joint family property or dealings represents the joint family estate, which may be bound or which maybe proceeded against the event of a decree being passed in the suit, and his legal representatives are the persons upon whom that estate devolves”.

However, in this matter the original respondent Gangaram as well as present respondent No.4 Vaijanath have clearly denied the fact that the appellant was their employee and that the thresher machine was the property of their joint family. Thus, when there was no pleading to the effect that thresher machine was being operated in respect of joint family business and that respondent No.4 Vaijanath was not party to the proceeding before the learned Commissioner, the plea of the appellant as regards the joint family business of original respondent Gangaram and his brothers who are the present respondents, is not at all acceptable. Such type of story has been raised for the first time in appeal only to fill up the lacuna.

12. The record shows that to substantiate his claim

the appellant has examined two witnesses including himself. Though he stated according to his case, but he could not adduce any satisfactory evidence that thresher machine was owned by original respondent Gangaram. On the contrary, it has come on record that the said machine was owned by present respondent No.4 Vajinath independently. Moreover, the theory of the appellant in respect of joint family property of the respondents is also not acceptable. Therefore, from the testimony of the appellant it cannot be inferred that he was under the employment of original respondent Gangaram at any point of time. Further, though the witness of appellant i.e. Mariba Kondiba Acharya has stated that he alongwith the appellant were engaged by original respondent Gangaram for operation of thresher machine for harvesting crops on daily wages of Rs. 40/-, but the paper cutting dated 16.11.1993 of newspaper daily Lokmat indicates that Mariba was given fair price shop in the year 1986 by the Government since he was unemployed. Even the statement of witness Mariba in Special Case No.95/93 indicates that he was running fair price shop since 1986 at Kopra which was granted to him by Government under Employment Guarantee Scheme. The statement dated 26.04.1996 of Mariba before the Additional Sessions Judge in Special Case No. 95/93 clearly indicates

the aforesaid fact and, and therefore, his deposition before the learned Commissioner that he was working under the employment of original respondent Gangaram on the thresher machine on daily wages of Rs. 40/-, is totally unbelievable.

13. The learned Counsel for respondent No.4 vehemently argued, by placing the reliance on the judgment of Hon'ble Apex Court in the case of ***Mackinnon Mackenzie & Co. vs Ibrahim Mahmmmed Issak*** (supra), that for getting compensation under WC Act it is essential that the injury must arise both out of and in the course of employment. Moreover, there must be a casual relationship between the accident and the employment. It is also observed that burden of proving employer – employee relationship is on workman and unless and until the said burden is discharged, the workmen cannot be found eligible for getting such compensation.

14. In the instant case, the appellant has not proved such employer – employee relationship by producing cogent evidence to that effect. On the contrary, the original respondent appears to have examined in all five witnesses including himself, who have deposed that Gangaram was not having any concern with the threshing machine as it was

owned by present respondent No.4 Vaijanath. Vaijanath, in his evidence has stated that he had purchased his own threshing machine which was being given to others on rent during the season and one Mr. Mohan Digole was the employee on the said machine. He has specifically stated that original respondent Gangaram i.e. his elder brother was not having any threshing machine and never indulged into the said business. He has stated that on 21.01.1994 his machine was in the field of Wasudeo Mundhe and Mohan Digole was working on the said machine. At that time the applicant had come there and demanded the said machine for which Mohan refused, but the appellant started pushing sunflower crop in the said machine and met with an accident as aforesaid. In the cross-examination also the testimony of Vaijanath remained unshattered.

15. It is significant to note that the original respondent Gangaram had also examined Mohan Digole who corroborated the version of Vaijanath. It is important to note that Mohan Digole is an eye witness, and therefore, his testimony carries utmost importance. He has specifically refused that the appellant was the employee either of Gangaram or Vaijanath. Moreover, the testimony of witness

Gangaram i.e. the original respondent also indicates that he had stated that Vaijanath and himself were residing separately and Vaijanath was having his own threshing machine and that he had no concern with the said machine. He also deposed that he had never engaged the appellant or Mariba for operating the said machine. It appears that the testimonies of the witnesses examined on behalf of the original respondent Gangaram remained unshattered even in the cross-examination and unless and until it is proved by the appellant that he was under the employment of original respondent Gangaram and the accident took place out of and in the course of his so called employment, he cannot claim any compensation.

16. Thus, it appears that respondent No.4 Vaijanath was not at all party to the original proceeding wherein it was transpired that the machine, in respect of which the accident of appellant took place, was owned by him. Nothing is brought on record by way of satisfactory evidence by the appellant that the said machine was being operated during the course of joint family business of Gangaram and his brothers. It appears that the appellant come out with the theory of joint family property for the first time in appeal

which is not permissible.

17. Learned Counsel for the appellant strongly submitted that the appellant was workman and employee of the respondent within the meaning of Section 2 (n) (ii), Schedule II, Entry XLV of the said Act. Admittedly, under the said entry, the workmen of threshing machine are included under the definition of “workman”, but it was necessary for the appellant to establish his employment under the original respondent Gangaram and his brothers in respect of joint family business of threshing machine. As aforesaid, I have already found that the appellant has failed to establish his such employment. Thus, he cannot get benefit of the definition of “workman” as mentioned above. It is extremely important to note that for getting the benefit of the provisions of the said Act, following ingredients are to be established :

- (i) the workman must not be employed as a casual workman; and*
- (ii) his employment must be in connection with the employer's trade and business.*

Here in this case, there is no satisfactory evidence in this regard. In the case of ***Central Mine Planning and Design Institute Ltd vs Ramu Pasi and another*** (supra), it has been observed as follows :

“A bare reading of the said Act shows that the expression “workman” as defined in the Act does not cover a casual worker. There was also no definite material adduced to show that the claimant was employed for the purposes of the employer’s trade or business”.

Likewise, this Court, in the case of *Central Mine Planning and Design Institute Ltd vs Ramu Pasi and another* (supra) has also explained who can be a workman under the definition of the said Act. It appears that the present appellant has not satisfied the criteria for being eligible for compensation as a workman, as contemplated in the Act.

18. Further, the sum and substance of the judgments in the cases of *Oriental Insurance Co. Ltd. vs Sorumai Gogoi, Jyothi Ademma vs Plant Engineer, Nellore and another, Shakuntala Chandrakant Shreshti vs Prabhakar Maruti Garvali and another and Mackinnon Mackenzie and Co. vs Ibrahim Mohommad Issak* (supra) is that the applicant, as per Section 3 of the Act must establish employer – employee relationship, the accident must be arising out of the employment and in the course of employment and there must be a casual connection between the injury of the applicant and his employment. All these necessary ingredients are missing in the present case. Further, Section 30 of the Act

clearly indicates that limited right is conferred on the appellant to file first appeal. As per the said Section, first appeal can lie only when there is substantial question of law is involved. In the instant case, it cannot be said that any substantial question of law is involved. The appellant has raised the contention of joint family business for the first time in the appeal which cannot be considered as substantial question of law since there was no such case of the appellant before the learned Commissioner. It appears that such plea, at this stage, is raised by the appellant only to harass respondent No. 4 Vaijanath as it was revealed in the trial Court that threshing machine was never owned by original respondent Gangaram. Therefore, considering all these aspects, it has been revealed that the appellant has failed to establish his employment under the original respondent Gangaram as well as present respondent No.4 Vaijanath, by adducing satisfaction evidence to that effect. Moreover, his so called theory of joint family business is also not believable. Further, the oral evidence adduced by the appellant is also not satisfactory to establish his claim as regards the compensation. Considering all these aspects and in view of the observations of this Court and of the Hon'ble Apex Court, I do not find any substance in the appeal. Resultantly the

appeal stands dismissed. In view of dismissal of the main appeal, Civil Application No. 1469 of 2000, claiming the same relief as that of appeal, also stands rejected.

(SANDIPKUMAR C. MORE, J.)