

FIRST APPEAL NO.1286 OF 2004

1. Shri Raju Govardhan Bihani
Age Major, Occ. Agri. & Shopkeeper,
 2. Shri Govardhan Shankarlal Bihani
age major, Occ. Agri. & Shopkeeper
Bihani Traders, Mayor Road, R/o
At & post. Rahuri Dist. Ahmednagar
- ... APPELLANTS/
(ORIG. OPPONENTS)**

VERSUS

Shri Bhaurao Shamrao Bhagat
Age Major Occ. Nil R/o Waghacha Mala
Behind Karandikar Hospital, Near
Shidharth Nagar Ahmednagar
Today at Mahanandnagar, Mahindra
Layout, T.R.Patel Old Umarsara,
Tq. Yeotmal Dist. Yeotmal.

...RESPONDENT
(ORIG. APPLICANT)

Advocate for the Appellants : Mr. V. N. Upadhye
Advocate for Respondent : Mr. P.S. Mantri h/f.
Mr. P.V. Barde

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 20.01.2023

PRONOUNCED ON : 31.01.2023

JUDGMENT :

1. The appellants, who are the original opponents have challenged the judgment and order dtd. 12.05.2004 passed by

the learned Judge, First Labour Court, Ahmednagar (hereinafter referred to as the 'learned Commissioner') in W.C.A.No. 84/1997 under the impugned judgment and award. The learned Commissioner has granted compensation of Rs. 1,72,926/- to the present respondent i.e. original claimant plus interest at the rate of Rs. 12% per annum reckonable after lapse of one month from the date of accident till its realization. The opponents being the alleged employer of the respondent - claimant have challenged the impugned judgment and award on the grounds that the claimant failed to establish the fact that he was workman within the meaning of Section 2(n) of the Workmen's Compensation Act, 1923 and also failed to establish the alleged relationship of employer and employee and that wrong computation of the compensation is made.

2. The background facts leading to this appeal are as under :-

According to the respondent -claimant, the appellants are having agricultural land in the vicinity of Rahuri village from where they used to reap the, crops of sugarcane, coconut trees and other commercial crops. The appellants had engaged the respondent -claimant for plucking coconuts from their coconut trees which were to be sold in open market by

them. On 14.03.1996, when the respondent -claimant was engaged for the work of plucking coconuts on daily wages of Rs. 100/-. He is started the said work at about 10.00 a.m. to 10.30 a.m. However, at 1.30 p.m. while plucking the coconuts from the tree, he fell down and got injured and thereby sustained fracture injury to his right leg and thus became disabled to the extent of 100% on permanent basis. As such, he claimed compensation of Rs. 2,54,148/-. The appellants vide their written statement denied that the respondent -claimant was under their employment. They came out with the case that one Arjun Bhausahab Unde, who was the businessman of the area had in fact approached them in the month of March -1996 and agreed to purchase the coconuts for Rs. 3,000/-. Thus, the appellants have claimed that the respondent -claimant was in fact working for Mr. Unde and they at any point of time had not engaged him for the work of plucking coconuts. The learned Commissioner by considering entire evidence on record has allowed the petition thereby asking these present appellants to pay amount of Rs. 1,72,926/- towards the compensation plus interest to the respondent -claimant at the rate of Rs. 12% per annum as mentioned above. Hence, this appeal.

3. The learned counsel for the appellants submits that the respondent -claimant has miserably failed to establish the fact that there was employer-employee relationship between himself and the appellants. He further submits that the claimant was not a workman within the meaning of Section 2(n) of the Workmen's Compensation Act, 1923 (hereinafter referred to as the 'Act' for the sake of brevity). Further, according to the learned counsel for the appellants, the learned Commissioner should have granted appropriate compensation of Rs. 62,945/- by considering minimum wages at the rate of Rs. 35/- per day at the relevant time. He also pointed out that the respondent -claimant also did not take diligent steps to include Mr. Unde and also failed in examining the Doctor, who had given the disability certificate.

4. The learned counsel for the appellants also submitted written notes of argument in addition to submissions advanced at bar and relied upon following judgments :

(1) Rajesh Kumar Vs. Yudhvir Singh and anr., 2008 (7) SCC 305,

(2) Kerala State Electricity Board and another Vs. Valsala K. and anr., 1999 [II] LLJ -1112 (SC) : AIR 1999 [SC] 3502,

(3) Pratap Narain Singh Deo Vs. Shrinivas Sabata and anr.,

1976 [1] SCC 289 : AIR 1976 SC 222,

(4) Danial Pathare Vs. Tilaknagar Industries Ltd. & anr., 2010 ACJ 2274 -(Bom.H.C.)

(5) Maharashtra State Road Transport Corporation, Osmanabad Vs. Prabhakar Kulkarni (Died), 2016 AAC 1963 (Bom).

5. On the contrary, the learned counsel for the respondent -claimant strongly opposed the submissions made on behalf of appellants and supported the impugned judgment.

6. The learned counsel for the respondent -claimant submits that the scope of appeal under the said Act is restricted only to the substantial questions of law involved and this Court cannot re-appreciate the evidence. Thus, according to him, there is no question of law involved in this appeal and the income of respondent -claimant being a specially skilled person is correctly assessed by the learned Commissioner. As such, he prayed for dismissal of the appeal.

7. By way of reply, the learned counsel for the appellants pointed out that the learned Commissioner, by ignoring the amendment in the said Act with effect from 15.09.1995,

considered the income of respondent as Rs. 2,500/- per month which was not permissible at the relevant time and therefore, the substantial questions of law is definitely there.

8. Though it is claimed by the learned counsel for the appellants that the respondent-claimant was not a workman within the meaning of the said Act, but the definition under Section 2(1)(n) along with the Schedule -II (XXIX) of the said Act clearly indicates that the respondent -claimant, who was employed in horticultural operations, was in fact covered under the definition of workman.

9. So far as the employer and employee relationship is concerned, it is the case of respondent -claimant that the appellants had engaged him for plucking the coconuts from their trees and while doing so he got injured. As against this, it is the case of appellants that one Mr. Arjun Bhausahab Unde was given contract of plucking the coconuts by them and amount of Rs. 3,000/- was also paid by Mr. Unde pursuant to that. The learned counsel for the appellants is claiming that the respondent -claimant had in fact under an obligation to implead Mr. Unde. However, it is settled principle that the burden of proof lies upon the person who asserts certain

things. Here, it is not the case of respondent -claimant that he was working under the supervision of Mr. Unde. On the contrary, it is asserted by the appellants only. Thus, it was for the appellant to bring the evidence of Mr. Unde to substantiate their contention that the respondent -claimant was working under him.

10. It would not be out of place to mention that the respondent had in fact tried to implead Mr. Unde, but unfortunately it was found that he was dead. Further, though there is one receipt under the signature of Mr. A.B. Unde is produced on record by the appellants, but he did not produce on record and the original receipt which was allegedly given to them by Mr. Unde. Moreover, the appellants also failed to in examining said Mr. Unde or his legal heirs and therefore, fact that the respondent -claimant could not bring on record Mr. Unde or his legal heirs, cannot be said to be adverse against him. On the contrary, the burden of proving the respondent -claimant being an employee of Mr. Unde, was definitely upon the appellants and they in fact miserably failed in doing so. Thus, it cannot be said that the respondent -claimant failed to establish the relationship of employer and employee between the appellants and himself.

11. It is significant to note that the appellants are claiming that exorbitant compensation has been granted by the learned Commissioner which according to them should have been only of Rs. 62,945/-. According to them the income of respondent -claimant was of Rs. 35 per day in view of Minimum Wages Act at the relevant time.

12. The learned counsel for the respondent -claimant strongly placed reliance on the judgment of Honourable Apex Court reported in the case of *Golla Rajanna etc. versus Divisional Manager and another, 2016 DGLS (SC) 1263*, wherein the scope of appeal under the scheme of said Act is discussed. It is observed by the Honourable Apex Court in the said judgment as under :

"11. Under the scheme of the Act, the workmen's Compensation Commissioner is the last authority on facts. The Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act."

13. Admittedly, as per the aforesaid observation, the scope is restricted only to substantial questions of law, but as per the learned counsel for the appellants, the learned Commissioner by ignoring the amendment in Section 4 of the said Act with effect from 15.09.1995, wrongly considered the income of respondent -claimant of Rs. 2,500/- per month instead of Rs. 2000/-.

14. Section 4 of the said Act is in respect of determination of amount of compensation which has been reproduced hereinbelow :

"4. Amount of compensation -(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely -

(a) Where death results from the injury : an amount equal to "[fifty per cent] of the monthly wages of the deceased workman multiplied by the relevant factor ; or an amount of [eighty thousand rupees], whichever is more ;

(b) Where permanent total disablement results from the injury : an amount equal to [sixty per cent] of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of [ninety thousand rupees], whichever is more.

Explanation I- For the purposes of clause (a) and clause (b), " relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of

that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II – Where the monthly wages of a workman exceed [four thousand rupees], his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be [four thousand rupees] only ;

(c)Where permanent partial disablement results from the injury : (i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

Explanation I- Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.- In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d)....."

15. Prior to the amendment of dtd. 15.09.1995 under Clause 'b' the amount was 50%. However, after the said amendment, it was increased and made 60%. Likewise, in Explanation-II

the words 'two thousand rupees' were inserted. As such, even though the monthly charges of the workman exceeded Rs. 2000/- his monthly wages for the purpose of clause (b) was deemed to be Rs.2000/- only. Thus, there was clear mandate of considering the monthly wages of workman to the tune of Rs. 2000/- irrespective of his actual earning. This position remained as it is till the new amendment to the aforesaid section came into force with effect from 08.12.2000 whereby those words 'Two Thousand Rupees' were replaced by 'Four Thousand Rupees.'

16. It is significant to note that the accident in the instant matter has taken place in the year 1996 and, therefore, considering the amendment of 15.09.1995 the learned Commissioner should have taken monthly income of the respondent -claimant to the tune of Rs. 2,000/- per month instead of Rs. 2,500/- per month. Therefore, considering this legal aspect intervention in the impugned judgment is definitely required. This fact is also accepted by the learned counsel for the respondent -claimant, and therefore, he submitted calculations by considering the monthly salary of respondent -claimant being Rs. 2,000/- per month. As such,

now in the changed circumstances, the compensation amount to the respondent -claimant is re-determined as follows :

16(i) The salary of respondent is taken Rs. 2,000/- per month and as per Section 4 of the said Act, 60% of the same comes to Rs. 1,200/-. When it is multiplied by relevant factor 192.14, it comes to Rs. 2,30,568/-. There is no serious dispute that the respondent has lost his earning capacity to the extent of 60% and therefore, considering the said percentage the amount of compensation comes to Rs. 1,38,340/- (60% of Rs. 2,30,568/-). The interest at the rate of Rs. 12% per annum is also applicable to the said amount of compensation from lapse of one month from the accidental date till its realization. Thus, by considering the date of accident i.e. 14.03.1996 the interest will start applying from 14.04.1996 and accordingly the period till deposit of amount comes to 8 years 4 months and 16 days since the date of deposit of amount is 03.08.2004. Thus, the interest amount as per the aforesaid calculations comes to Rs. 1,38,949/-. Thus, it appears the respondent -claimant is now entitled for total compensation of Rs. 2,77,289/- along with the interest. It is not disputed that the appellants have deposited amount of Rs. 1,72,926/- with the learned Commissioner and

vide order dtd.20.09.2004, this Court had allowed the respondent -claimant to withdraw 50% of the said amount on undertaking and 50% on furnishing security. However, it seems that the respondent has withdrawn only 50% of the said amount and therefore now he is entitled to withdraw the remaining amount also. It is already held hereinabove that the respondent -claimant is entitled for total compensation of Rs. 2,77,289/- along with the interest and therefore, after deducting the amount of Rs. 1,72,926/- which is already deposited, the respondent -claimant is entitled for balance amount of Rs. 1,04,363/-.

17. In view of this, following order is passed :

ORDER

- (i) The Appeal is hereby partly allowed.
- (ii) The respondent -claimant is now entitled for total compensation of Rs. 1,38,340/- plus 12% interest from the lapse of one month from the accident till its actual realization.
- (iii) Accordingly, the appellants shall pay total amount of Rs. 2,77,289/- inclusive of interest as mentioned above.

- (iv) The respondent is permitted to withdraw the balance amount which has been deposited by the appellants in the Court of learned Commissioner along with the interest accrued thereon till date.
- (v) The appellants shall additionally pay amount of Rs. 1,04,363/- as a part of compensation to the respondent within three months from the date of this order, failing which the said amount shall carry the interest at the rate of Rs. 6% per annum till its realization.
- (vi) Award be modified and prepared accordingly.
- (vii) The pending Civil Applications, if any, stand disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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shp/-