

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13410 OF 2021

Suresh S/o Kantilal Darda

.... Petitioner

Versus

Varsha Vijaykumar Landge
and others

.... Respondents

.....

Mr. Shrirang B. Warma, Advocate h/f Mr. B.R. Warammaa,
Advocate for the Petitioner

Mr. A.R. Borulkar, Advocate for Respondent Nos.1 to 5

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 09th JUNE, 2023

PRONOUNCED ON : 11th JULY, 2023

ORDER :

1. This petition, filed under Article 227 of the Constitution of India, challenges the order dated 01/10/2021 passed by the learned Commissioner of Employee's Compensation and Judge, Labour Court-II, Aurangabad, below Exhibit U-13 in W.C. Case No.39 of 2018.

2. Workmen Compensation Case No.39 of 2018 is filed by the respondents claiming compensation on account of death of Vijaykumar Landge, as while on duty on 18/03/2018, he met with an accident and expired due to injuries received in the accident. Alongwith the claim application, a list of

documents containing certified copies of Spot Panchanama, Inquest Panchanama, report of police forwarded to the Civil Surgeon, Postmortem report, registration particulars of Vehicle MH-20/BX-9304, is filed.

3. Petitioner/employer opposed the claim by filing detail say, thereby denying employer-employee relationship and liability to pay compensation. The petitioner, however, admitted ownership of vehicle No. MH-20/BX-9304, involved in the accident. Issues were framed below Exhibit-3 on 01/04/2019. Respondent/claimant filed her evidence affidavit. At the time of recording her evidence, the respondent/claimant requested to exhibit certified copies of the documents filed along with evidence affidavit i.e. Inquest Panchanama, Spot Panchanama, Postmortem report, and statements of witnesses recorded during the course of investigation. It appears that at that time, these documents were not exhibited.

After filing Application Exhibit-13, the claimant contended that, on previous date, she filed evidence affidavit and was examined. In her evidence, she has referred certified copies of Inquest Panchanama, Spot Panchanama, Postmortem report, and statements of witnesses recorded during the course of investigation. Since, these are certified

copies received from the police, they are public documents as provided under Section 74 of the Indian Evidence Act, and they can be exhibited as per Section 79 of the Indian Evidence Act. Hence, these documents be exhibited.

4. The petitioner/employer opposed the said application by filing a detail say, claiming that there is no presumption in law about genuineness of investigation papers unless proved in accordance with law. It is also stated that while recording examination-in-chief of the claimant, the Tribunal refused to exhibit the said documents, since these documents are not public documents, they will have to be proved in prescribed manner. Learned Commissioner directed to exhibit the certified copies of investigation papers. The petitioner is aggrieved by this order.

5. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the writ petition memo, annexures thereto, impugned order and rulings relied upon by the learned advocates for the petitioner and respondents.

6. Learned advocate for the petitioner assailed the impugned order, submitting that investigation papers are not

public documents within the meaning of Section 74 of the Evidence Act, and certified copies of the same cannot be exhibited. In support of this submission, he relied on ***Saurav Das Vs. Union of India and others, 2023 SCC OnLine SC 58.*** He, therefore, submits that the impugned order cannot be sustained. Hence, the writ petition deserves to be allowed. According to him, claimant is at liberty to prove the said documents in accordance with law.

7. Per contra, learned advocate for the respondents supported the impugned decision by submitting that the Commissioner under the Workmen's Compensation Act is discharging quasi judicial function, and hence Rules of evidence and provisions of Code of Civil Procedure are not strictly applicable to the said proceedings. In support of this submission, he relied on ***Om Prakash Batish Vs. Ranjit @ Ranbir Kaur and others, 2008(12) SCC 212*** and ***Maha Laxmi Hosiery Vs. Govind Singh and another, 2022 SCC OnLine Del 1754.***

8. Record indicates that on account of death of deceased Vijaykumar Landge on 18/03/2018, his family members have filed application under Section 3 of the Workmen's Compensation Act, claiming compensation against

the petitioner. It is not in dispute that in order to substantiate the said claim, the certified copies of documents i.e. Spot Panchanam, Inquest Panchanama, Postmortem report are placed on record during the course of hearing of the claim. The Workmen's Compensation Act is enacted with an object to provide compensation to the employees from the employer for injury by accident. The Commissioner, while adjudicating the claim, performs a quasi-judicial act. It is a settled legal position that Rules of evidence and procedural Rules are not strictly applicable to the quasi judicial proceedings.

9. In ***State of Mysore Vs. S.S. Makapur, (1964) 1 LLJ 24 SC***, the Apex Court held that,

"For a correct appreciation of the position, it is necessary to repeat what has often been said that Tribunals exercising quasi-judicial functions are not Courts and that, therefore, they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity, must depend on the facts and circumstances of each case but where such

an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts.

To the same effect is the decision in Engineering Mazdoor Sabha v. Hind Cycles Ltd., Bombay (1963) 1 Supp. S.C.R. 625 at 631, already referred to. There that Court pointed out:

They (the Tribunals) can compel witnesses to appear, they can administer oath, they are required to follow certain rules of procedure; the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words, they have to act judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or inclinations."

10. In ***Om Prakash Batish*** (supra), the Apex Court held held;

"In a proceeding initiated under the Act the provisions of the Code of Civil Procedure or of the Evidence Act are not applicable. The Commissioner could lay down his own procedures. He could, for the purpose of arriving at the truth, rely upon such documents which were produced before it."

11. In the light of aforesaid observations, it is clear that the Commissioner while deciding Workmen's Compensation claim is discharging quasi-judicial function and he is not a Court. Therefore, he is neither bound to follow procedure prescribed for trial of actions, nor he is bound by strict rules of evidence. The Commissioner can lay down his own procedure and for the purpose of arriving at the truth, rely upon such documents which are produced before him. In this view of the matter, the order of learned Commissioner, there by exhibiting the certified copies of investigation papers cannot be faulted with. In strict sense, he may not be justified in placing reliance on Section 74 of the Indian Evidence Act, while exhibiting the said documents, but he is entitled to exhibit the documents and consider those documents while deciding the claim on merits.

12. Decision in ***Saurav Das*** (supra) is rendered in different context. In that case, Writ Petition was filed under Article 32 of the Constitution of the India, seeking appropriate directions to the respondents-States to publish chargesheets and final reports, under Section 173 of the Code of Criminal Procedure on their web sites, to enable free public access to the same, in furtherance of rational as established by the Apex

Court in *Youth Bar Association of India Vs. Union of India*, (2016) 9 SCC 473. The petitioners therein placed reliance on Sections 74 and 76 of the Indian Evidence Act to contend that investigation papers are public documents.

The Apex Court in these facts held that chargesheet/ documents along with the chargesheet cannot be said to be public documents under Section 74 of the Indian Evidence Act, and the reliance placed on those sections is absolutely misplaced.

13. In view of the ratio quoted (*supra*), in the present case since the proceedings under Workmen's Compensation Act is quasi judicial proceeding before the learned Commissioner, and the learned Commissioner is acting in quasi judicial capacity for deciding the proceeding filed by the claimant under Workmen's Compensation Act, the Rules of Evidence and provisions of Code of Civil Procedure are not strictly applicable to the said proceeding.

14. This *prima facie* appears to be an attempt on the part of the employer to prolong the claim proceedings filed by the family members of the deceased by raising hyper technical objections. No illegality or perversity is found in the order

impugned in the present petition. Since the order impugned in the present petition is equitable order, this Court is not inclined to interfere in the same in exercise of extraordinary writ jurisdiction. The writ petition being devoid of merit is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane