



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO.1536 OF 2008

Sudhir s/o Mukundrao Randive
Aged 56 years,
Occupation – Medical Profession,
R/o. Lakhani, Tah. Lakhani,
District Bhandara.

...APPELLANT

VERSUS

1. Smt. Chanda wd/o Sudhir Waghaye
Age 27 yrs., Occupation – Cultivator,
2. Luis s/o Sudhir Waghaye
Aged 7 yrs.
3. Manish s/o Sudhir Waghaye
Aged 3 yrs.

Nos.2 and 3 Minors through
natural guardian mother
Smt. Chanda wd/o Sudhir Waghaye

All R/o. Kesalwada (Wagh)
Tah. Lakhani, District Bhandara

...RESPONDENTS

Shri N.G. Solao, Advocate for the appellant.
Shri P.K. Rahangdale, Advocate for respondent Nos.1 to 3.

CORAM : URMILA JOSHI-PHALKE, J.

RESERVED ON : APRIL 06, 2023.

PRONOUNCED ON : JUNE 05, 2023

JUDGMENT :

Heard learned Counsel for the parties.

2. The present appeal is preferred under Section 30 of the Employee's Compensation Act, 1923 against the judgment and award dated 25/08/2008 in FWCA No.4/2007 passed by the Commissioner under the Employees Compensation Act and Judge Labour Court, Bhandara. The parties are hereinafter referred as per their original nomenclature.

3. The facts in brief are as follows :

A] The deceased - Sudhir Waghaye is the husband of claimant No.1 and father of claimant Nos.2 and 3. The deceased was engaged by the respondent for demolition work of his house. There was oral agreement between the deceased and the respondent. Respondent agreed to pay Rs.100/- per day to the deceased as a daily wages for the said work. Thus, the deceased was earning Rs.3000/- per month. The claimants are the dependents of the deceased. On 06/07/2006, deceased was present at the work site and was doing the work of demolition of wall of the house of the respondent. Suddenly, one wall of the said house collapsed on the person of the deceased and he sustained injuries and succumbed to the death.

4. As per the contention of the claimants, the deceased was engaged by the appellant for said work thus, there was employer-

employee relationship. The said accident took place during the course of and in the course of employment, therefore, the claimants are entitled to receive the compensation.

5. In response to the notice, respondent – employer resisted the claim and denied the liability. As per the respondent, deceased was a Contractor and not covered under the definition of employee. As the deceased was not worker, the dependents are not entitled for compensation.

6. To substantiate the contention, claimant No.1 adduced her evidence vide Exhibit-15 and reiterated the contention that the deceased was employee of the respondent and his death was caused during the course of and in the course of employment. In support of her contention she further examined Shri Manohar Kodu Uike, another labour working with the deceased vide Exhibit 25 and Vikas Madhukarrao Save vide Exhibit – 26 who was also labour on the work site. Besides oral evidence, the claimants placed reliance on merg report (Exhibit 17), Spot panchnama (Exhibit 18), Inquest Panchnama (Exhibit 19), Post-mortem report (Exhibit 20) and notice (Exhibit 21).

7. To rebut the evidence of the claimants, respondent adduced his evidence vide Exhibit 30 and denied his liability. He further

examined Sajid Ali Wald Barkat Ali Sayyed vide Exhibit 31 and Surendra Digambar Bondre vide Exhibit 34 to show that the deceased was Contractor and not a Labour.

8. After appreciating the evidence, the Commissioner under the Employees Compensation Act observed that the evidence on record sufficiently shows that the deceased was covered under the definition of workman. The alleged accident took place during the course of and in the course of employment. Therefore, the respondent is liable to pay compensation.

9. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant on the ground that he had allotted the work of demolition of wall of dispensary and bar to the deceased - Sudhir Waghaye on contract for Rs.6000/-. Thus, the deceased was Contractor and not a Workman, therefore, the claimants are not entitled to receive the compensation.

10. Heard Shri N.G. Solao, learned Counsel for the appellant. He vehemently submitted that the entire evidence on record sufficiently shows that there was no employer-employee relationship between the deceased and the respondent. Deceased has obtained the said work on contract. Being a Contractor, he was present at the spot when the

alleged incident occurred. As there was no employer–employee relationship, the claimants are not entitled for any compensation.

11. *Per contra*, Shri P.K. Rahangdale, learned Counsel for claimant Nos.1 to 3 supported the judgment of the trial Court. He submitted that there was employer-employee relationship between the deceased and the respondent. The alleged accident took place during the course of in the course of employment, therefore, the claimants are entitled to receive the compensation.

12. The substantial question of law was not framed at the time of admitting the matter. Now, I am framing the same as follows:

- (i) Whether the claimants are entitled for the compensation on account of accidental death of the deceased?
- (ii) Whether the deceased was Contractor and was agreed to demolish the dilapidated wall by engaging labours and who died in the alleged accident?

13. The evidence of the applicant as well as PW-2 and PW-3 who are the labours, working along with the deceased categorically stated that the deceased was present on the work site as a Labour along with

them. He was engaged along with them for demolishing the wall of the said Dispensary and Bar. The evidence of PW-2 and PW-3 further shows that more 7 to 8 workers were working along with them. Admittedly, PW-1 – Chanda, wife of the deceased is not the eye-witness. She categorically stated that her husband was doing the work of labour on daily wages. She denied that he obtained the work of demolition on contract basis. PW-2 and PW-3, the labours who were working with the deceased also denied the fact that the deceased was a Contractor and present at the spot in the capacity of Contractor but their evidence is that the deceased was also doing the work of demolishing the wall, at the relevant time, the wall collapsed on the person of the deceased and he died. Whereas, the respondent came with a case that the deceased was a Contractor. As per his evidence, the deceased approached to him and obtained the work on contract. Admittedly, there was no written agreement between the respondent and the deceased. There is further no evidence that the deceased was a Contractor and was obtaining the work on the contract basis. Respondent specifically admitted that he has no document to show that the deceased was a Contractor. RW-2 also testified that the deceased was a Contractor and was guiding the labours how to demolish the wall, but said contention is not supported by the labours i.e. PW-2 and PW-3. During cross-examination RW-2 specifically admitted that he is not aware whether the work of demolition of wall

was given on contract basis or not. This admission is sufficient to show that this witness has no personal knowledge regarding the transaction between respondent and the deceased. RW-3 who is a Contractor has also stated that the demolition work was given to the deceased and in his presence the work was allotted to the deceased. However, his cross-examination shows that he is not aware whether the deceased was having license to work as a Contractor. He further admitted that the demolition work was carried out through the labours. Thus, after appreciating the entire evidence of the claimants as well as the respondent there is absolutely no evidence to show that the deceased has obtained the said work on contract basis. In fact, the evidence of the labours is more probable which shows that the deceased was working along with them as a Labour.

14. The definition given under Section 2(1)(dd) is :

2(1)(dd) - “employee” means a person, who is -

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as it specified in Schedule II; or

(ii) (a) a master, a seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as a driver, helper, mechanic, cleaner or any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as it specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependents or any of them.

Thus, the definition especially under Section 2(1)(dd)(iii) covers the person who are engaged in employment on the basis of contract which is either expressed or implied, oral or in writing.

15. In the present case, the evidence of PW-1 wife as well as PW-2 and 3 who were working with the deceased shows that the deceased was Workman under Section 2(1)(n) of the Act though engaged temporarily, and therefore, the claimants are entitled for the compensation. Though respondent raised the issue that the deceased was a Contractor but except his bare words no other evidence is on

record to show that the deceased was working in the capacity of the Contractor. There is no dispute that the alleged incident occurred when the deceased was present at the work site. Thus, the evidence on record shows that the alleged accident occurred during the course of and in the course of employment. Though the witnesses examined by the respondent RW-2 – Sajid Ali Sayyed and RW-3 – Surendra Digambar Bondre deposed that the deceased was Contractor but their cross-examination discloses that they have no personal knowledge whether the deceased was Contractor or Labour. Moreover, there is no evidence that earlier deceased has obtained such type of works on contract basis. The deceased was not having any license for doing the work on contract. Thus, the contention of the respondent is not substantiated by any evidence. Though learned Counsel Shri Solao placed reliance on *Lakshminarayana Shetty Vs. Shantha and anr., (2003) 9 SCC 190* but the facts of the cited case shows that there was a contract between the appellant and one Ramu, and therefore, the Hon'ble Apex Court held that the case did not fall within the four corners of the said Act. Here no such evidence is on record to show that there was a contract between the respondent and the deceased. The evidence on record sufficiently shows that the deceased was engaged as a worker for a temporary period. The deceased was covered under the definition of "employee" and his death is caused during the course of and in course of

employment. The claimants have established casual connection between the occurrence of the incident and the employment.

16. In view of that the observation of the Commissioner under the Employees Compensation Act and Judge Labour Court, Bhandara that the claimants are entitled for compensation as the accident occurred during the course of and in the course of employment cannot be faulted with. The appeal is devoid of merits and liable to be dismissed.

17. Hence the appeal is dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

**Divya*