



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1517 OF 2019

Shradha Electrical Engineering Company
Nanded. Through its Proprietor
Shri Amit S/o Pandharinath Kanthewad,
Age : Major, Occu: Business,
R/o. Vidut Bhavan, New Mondha,
Nanded, Tq. & Dist. Nanded.

... Appellant
(Orig. Resp. No.2)

VERSUS

1. Mahanandabai Wd/o Narayan Aaher
Age: 35 years, Occu: Household,
R/o. Ajar Sonda, Post: Jawala,
Tq. Aundhanagnath, Dist. Hingoli.
2. Shrikrishna S/o Narayan Aaher
Age: 18 years, Occu: Education,
R/o. Ajar Sonda, Post: Jawala,
Tq. Aundhanagnath, Dist. Hingoli
3. Radha D/o Narayan Aaher
Age: 18 years, Occu: Household,
R/o. Ajar Sonda, Post: Jawala,
Tq. Aundhanagnath, Dist. Hingoli
4. Madthrubai W/o Rangnath Aaher
Age: 70 years, Occu: Household,
R/o. Ajar Sonda, Post: Jawale,
Tq. Aundhanagnath, Dist. Hingoli

... Respondents
(Orig. Claimants)

5. Shradha Electrical Engineer,
Through its Proprietor-
Maroti S/o Ganpatrao Kanthewade,
Age: Major, Occu.: Business
R/o. Vidut Bhavan, New Mondha,
Nanded, Tq. & Dist. Nanded.

... Orig. Resp. No.1

.....
Mr. Ganesh P. Shinde, Advocate for Appellant
Mr. Ashutosh S. Kulkarni Advocate for Respondent Nos.1 to 4
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th AUGUST, 2024

ORDER :

1. Heard. This appeal is taken up for final hearing at admission stage with consent of the parties.

2. This appeal filed under Section 30 of Employees Compensation Act (for short, 'the said Act'), challenges the judgment and award dated 10.08.2016 passed by learned Ex-Officio Commissioner for Employee's Compensation and Civil Judge, Senior Division, Hingoli in F.A. No.10 of 2011.

3. Respondents/claimants No.1 to 4 filed claim contending that Narayan Aaher was employee of Shradha Electrical Engineering through proprietor Maroti S/o. Ganpatrao Kanthewad and Shradha Electrical Engineering Company, Nanded through proprietor Amit S/o. Pandharinath Kanthewad at monthly salary of Rs.6,000/-. Both the engineering companies used to undertake to do the work of electricity transmission lines on the poles on behalf of Maharashtra State Electricity Distribution Company. Narayan was engaged for digging and fixing cement poles and installing electricity transmission of it. On 19.01.2011, while doing the said work in the course of his duty, in the agricultural field of

Ganpatrao S/o Naroji Jamdade at Raiwadi, Taluka Basmat, at about 10.30 p.m., Narayan had climbed the cement pole, which broke down and he failed down and died on the spot. At the time of death, he was 43 years old. Case of accidental death of deceased Narayan was registered at Hatta Police Station. Though compensation was demanded from both the companies, they failed to pay it. Hence, claimants claimed compensation of Rs.5,26,620/- along with 12% interest and penalty. Learned Commissioner, after recording the evidence, partly allowed the claim only against Respondent No.2/Shradha Electrical Engineering Company, Nanded through its proprietor/owner Amit S/o Pandharinath Kanthewad and directed to pay compensation of Rs.5,26,620/- along with 12% interest. Penalty of Rs.5,000/- is also imposed on the second respondent/appellant. Being aggrieved by the said award, appellant has filed the present appeal.

4. Heard learned advocate for appellant and learned advocate for respondents No.1 to 4. Though served, none appears for respondent No.5.

5. Learned advocate for appellant assailed the impugned judgment and award contending that learned Commissioner has misread and misconstrued the evidence on

record and has ignored the letter dated 12.04.2016 (Article 'B') placed before it, by which it was informed to the appellant that, when Assistant Engineer Hatta has visited the work done in the field of Ganpatrao Naroji Jamdade of agricultural pump connection and erection of three cement poles and wiring, the said work was not done by the appellant. He submits that necessary documents were placed on record to indicate that appellant was asked not to do the said work as there was no sanction of Divisional Office. He therefore submits that the work wherein accident has occurred and deceased has expired by falling from the electricity pole was not done by the appellant, and therefore, appellant is not liable to pay compensation to the claimants. Further submission is, age of the deceased is not proved in spite of that learned commissioner has erroneously held that deceased was 43 years of age. In the cross-examination of PW-1/wife of deceased has admitted that she is 32 years old and deceased was 10 years older than her. This is the only evidence on which the age of deceased is held as 43 years. Therefore, he submits that claimants have failed to prove the age of deceased, and therefore, appeal deserves to be allowed and the impugned judgment and award is liable to be quashed and set aside.

6. Per contra, learned advocate for claimants supported the impugned judgment and award. He submits that in terms of section 30 of the said Act, appellant has failed to raise any substantial question of law in this first appeal, and therefore, the first appeal is not liable to be entertained on this ground alone. By relying on observations of learned Commissioner, he submits that on the date of issuance of letter dated 12.04.2016 (Article 'B'), the accident has taken place in which deceased has expired. For the accident, FIR was lodged against the appellant and subsequently charge-sheet is also filed. Therefore, he submits that claimant No.1 has discharged preliminary burden proving that the death is caused while deceased was in the employment of appellant. He submits that there is no merit in the appeal and appeal is liable to be dismissed.

7. Heard learned advocate for appellant and learned advocate for respondent Nos.1 to 4, at length. Perused the record.

8. At the outset, it is required to be noted that there is no substantial question of law is framed by the appellant in the appeal memo nor any substantial question of law was argued at the time of hearing.

9. There is no merit in the contention of appellant that in view of letter dated 12.04.2016 (Article 'B'), appellant has not done work in the field of Ganpatrao Naroji Jamdade. The said letter is addressed to appellant by Deputy Executive Engineer, M.S.E.D.C.L., Sub Division, Vasmath, wherein it is stated that appellant was given work order to carry out the work of agriculture pump connection and three cement poles and wiring work in the field of Ganpatrao Naroji Jamdade. The said work is seen by Assistant Engineer Hatta and the same is not done by Shradha Electrical Engineering Company, Nanded. This letter does not state the date on which Assistant Engineer visited the agricultural field of Ganpatrao Naroji Jamdade and on what basis he has come to conclusion that the said work is not done by the appellant.

10. Appellant has strongly relied on Exhibits 44 and 45. Exhibit-44 is a letter issued by Executive Engineer, M.S.E.D.C.L., Sub Division, Vasmath to the appellant on 25.01.2011. It is stated that as per reference No.1, work order is issued, consumers whose estimates are not sanctioned, their estimates are forwarded to Division Office for approval. Hence, till approval to the estimates is received, these consumers' work should not be done.

This letter appears to have been issued at the instance of the appellant. It does not have outward number. It is not clear as to when the appellant has received this letter.

11. By Exhibit-45/letter dated 24.01.2011, appellant has informed the Assistant Engineer, Vasmat Sub Division that since no estimate numbers are mentioned in the work order at Sr. Nos.3 to 8, these works may be deleted from the work order. This letter also does not have outward number.

12. It is a matter of record that accident has taken place on 29.01.2011 and accidental death No.4/2011 is registered under section 4 of the Code of Criminal Procedure at the instance of respondent No.1/claimant (wife of deceased). Spot panchanama and post-mortem of the deceased conducted by police supports the contentions of claimant.

On a query made by this Court, learned advocate for appellant has fairly submitted that appellant was prosecuted under section 304-A of the Indian Penal Code in respect of accidental death of the deceased. Learned Commissioner, on the basis of material placed on record, has held that the work order (Exhibit-35) coupled with police investigation regarding accidental death of Narayan Aaher clearly shows that deceased had died in accidental death, while doing labour work for

respondent No.2/Shradha Electrical Engineer, Nanded. Unless directed by respondent No.2, the deceased would not have done the work of erecting cement poles and lying electric cables.

13. So far as argument in respect of age of deceased is concerned, post-mortem report (Exhibit-27) mentions age of the deceased as 35 years, whereas learned commissioner has considered his age as 43 years in view of admission given by claimant no.1 in her cross-examination that she is 32 years old and deceased was 10 years older than her. No fault can be found with the said finding recorded by the learned Commissioner.

14. In the light of aforesaid reasons and as there is no substantial question of law involved in the present first appeal, the same is dismissed.

15. Appellant shall deposit the amount of interest before the learned Commissioner within 12 weeks from the date of uploading of this order.

16. Amount of compensation deposited by the appellant be paid to the claimants along with accrued interest thereon.

**[NITIN B. SURYAWANSHI]
JUDGE**