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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 406 OF 2021
WITH
CIVIL APPLICATION NO. 14645 OF 2019**

Varishth Bhu- Vaidnyanik
Bhujal Sarvekshan and Vikas Yantrana,
Administrative Building,
Old Collector Office Campus, Latur

...Appellant

VERSUS

1. Varsha Maruti Ingole,
Age-Major, Occu-Household
2. Rohit Maruti Ingole,
Age-Minor, Occu-Education
3. Om Maruti Ingole
Age-Minor, Occu-Education
(Claimant Nos. 2 and 3 both minor
Age U/g of mother claimant No.1
All R/o. Prakash Nagar (Vikas Nagar)
Barshi Road, Latur

...Respondents

Mr. S. K. Shirse, Advocate for the appellant
Mr. S. S. Manale, Advocate for respondent Nos. 1 to 3

**CORAM : KISHORE C. SANT, J.
RESERVED ON : 27th JUNE, 2024
PRONOUNCED ON : 11th JULY, 2024**

JUDGMENT:

1. This appeal arises out of the judgment and order dated 04-05-2019 passed by the learned Commissioner under Employees Compensation Act, 1982/ Judge. Labour Court, Latur in Application (WCA) No. 11/ 2017. By way of impugned judgment and order the learned Commissioner held that deceased Maruti aged 38 years died of injury caused in accident during the course of employment with respondent on 23-09-2016. The appellant employer by applying relevant factor of 189.56 is directed to pay the lump-sum compensation of Rs.7,47,600/- @ 12% from one month of the date of accident till the date of depositing of the amount. Further penalty was directed of Rs.3,73,800/-. Present appellant is respondent before the learned Commissioner. Present respondents are original claimants before the learned Commissioner.

2. Facts in short giving rise to the present appeal are as under:-

a] That deceased Maruti who happened to be husband of applicant No.1 and father of applicant Nos. 2 and 3 who was working under the employment of respondent. He was working since 18-10-1995 as class-IV employee who was paid wages Rs.8000/- per month. On 30-09-2016, he was carrying bundles of documents from the office of respondent to office of Zilla Parishad. While carrying those documents he fell down on stairs of Zilla Parishad, in which he sustained grievous injuries on his head. He was carried to the hospital, where he died even before treatment. After the accident claimants issued a notice under Section 10 of the Employment Compensation Act on 19-12-2016 and called upon respondent to deposit and pay compensation amount. A notice was replied by respondent. Though it was admitted that deceased was in employment, his working hours were different and at the time of accident it was stated that he was not on duty. Since the respondent failed to pay the compensation, the applicants filed application.

c. In the application, the defense of the respondent

mainly is that at the time of death deceased was not on duty. His duty hours were from 6 am to 10 am and 6 pm to 10 pm as Guard/Watchman. The accident took place at Zilla Parishad Building. When the accident took place, he was not supposed to be on duty. The accident therefore cannot be said to be arising out of and during course of employment.

d] Learned Commissioner after trial and on going through the evidence held that the accident took place during the course of employment and proceeded to pass impugned judgment and order.

3. Heard the learned advocates for the parties.

4. Learned AGP vehemently argued the appeal. He submits that deceased died natural death due to heart attack and not because of accident. Duty chart produced on record would show that his duty hours were 6 am to 10 am in the morning and 6 pm to 10 pm in the evening. At the time of

accident he had no reason to come in the premises. He relies on the duty chart in support of his submission about duty hours. He further relies upon the judgment reported in 2009 AIR (SC) 2019 in the case of Malikarjuna G.Hiremath Vs Branch Manager, Oriental Insurance Company Ltd. And anr, AIR 1964 SC 193 & in the case of General Manager, BEST Undertaking Bombay Vs Agnes reported in 1964 AIR(SC) 193. He ultimately prayed that in any case the matter requires a remand on the point of deciding the exact cause of death which in his submission is not proved from the evidence on record. From the postmortem notes he submits that cause of death is coronary artery insufficiency.

5. Learned advocate for the respondent vehemently opposed the appeal. He submits that there is no substantial question of law involved as required under Section 30 of the Employees Compensation Act. It is proved that deceased was carrying the bundle of files and in that he fell down from the stair case and received injuries. Column No. 17 of the postmortem notes would show that the deceased received

injuries on occipital region. There was contusion irregular reddish blood infiltration which clearly indicates that deceased had met with an accident. Duty chart which was produced on record was of 2013. No duty chart of the year 2016 was produced by appellant. There is no sufficient pleadings in respect of defense. Onus to prove that the deceased was not on duty was on the appellant. There is no question asked in the cross-examination suggesting that the deceased was not on duty. The accident took place at 03.00 pm. The witness of the Zilla Parishad had accepted that deceased was appointed as Class-IV employee. He submits that the judgments cited above are not applicable in view of the facts involved in this case. Non-producing of duty chart of 2016 give rise to adverse inference. He, thus, prays for dismissal of the appeal.

6. This court has gone through the evidence and record. In support of the application, applicant No.1 Varsha filed her affidavit in lieu of examination in chief. She was cross-examined at sufficient length. Nothing is taken on record to

discredit her evidence. Respondent examined one Doctor Bhalchandra Sanganwar, Senior Geologist, Latur. He stated that building of Zilla Parishad and his office was at distance of 1000 ft. He deposed that working hours of the deceased were from 6 am to 10 am and evening 6 pm to 10 pm. He proved the duty chart dated 01-12-2012 by which chart dated 01-01-2013 was prepared. Deceased was working as Watchman. He was given assignment of carrying files. The deceased died natural death. In the cross he admitted that his duty chart of the year 2016 is not produced on record. From the postmortem report it is seen that there was injury on the skull over occipital region. It appears from postmortem report that there were blockages to the extent of 85% in the artery of blood and in that view opinion about death was given due to coronary artery insufficiency. This is the only witness is examined by appellant.

7. This court has considered this case looking to the above evidence and judgments cited by the learned AGP. So far as the facts are concerned, it has clearly come up before this

court that the deceased was in the employment of respondent-present appellant. He was on duty on the date of accident and at the time of death, he was carrying bundles of files to the office of Zilla Parishad, Latur. There he received accidental injuries. A notice exh.U-30 was given on 19-06-2016 by the applicants. Said was replied on 29-12-2016. In reply mainly it is defense that at the time of accident deceased was not on duty as his working hours were different. To consider whether the deceased was not on duty, possible evidence was to produce duty chart of the year 2016. Though this best evidence was available with respondent, said is not produced on record. The court has thus rightly drawn adverse inference against respondent. Second evidence is that deceased died natural death. It is seen that fact of falling down from the stair case is clearly established. The injury is also established. It is not clearly established that the deceased died only after heart attack and no such accident took place.

8. Coming to the judgment cited by the appellants in

the case of Malikarjun (supra) the Hon'ble Apex Court has held that the accident means an untoward mishap which is not expected or designed. Injury means physiological injury. What is required to be proved that accident has taken place. In the said case deceased was working as driver who was taking truck to Gurugunta. Thereafter he went to a pond for taking bath. While taking bath he slipped and fell down in the water and died due to drowning. In that view, it was held that the deceased did not die of an accident during the course of employment. So far as the judgment in the case of General Manager (supra) is concerned, the deceased was working as driver of bus. On the date of his death, the deceased had finished his work at 07.45 pm. He took bus to bus depot and left the bus in the depot. The deceased thereafter boarded another bus to go to his residence. Said bus collided with a stationery lorry and in that accident deceased was thrown out on the road and received injury. He succumbed to the injury. In such facts it was held that death is not because during the course of employment and claim was refused.

9. This court has considered the facts of the judgment cited on facts. This court finds that both the judgments are not applicable to the present case. Here it is proved by the respondent through evidence of applicant No.1 that deceased was on duty and was carrying files to the office of the Zilla Parishad when he was on duty. There is nothing on record to disbelieve this fact. There is no evidence adduced contrary to the evidence adduced by the respondent employer. No duty chart of 2016 was produced before the court . This court finds that thus entire case is on facts. No substantial question of law is made out to entertain the appeal. The appeal therefore, needs to be dismissed and same is hereby dismissed. If amount or part of the amount is lying with the learned Commissioner under E.C. and Judge Labour Court, Latur same be released in favour of original claimants alongwith interest.

10. Appeal stands disposed off.

11. No order as to costs.

(11)

fa406.21

12. In view of dismissal of the appeal, pending civil applications, if any do not survive and stand disposed off.

[KISHORE C. SANT, J.]

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