

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1106 OF 2003

Smt. Rukminibai Baban Jadhav ..Appellant
Versus
Yellappa Chandru Gavali & Ors. ..Respondents

Mr. Tejpal S. Ingale, for the Appellant.
Ms. Poonam Mittal, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 6th FEBRUARY, 2024

PC.

1. This Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (now Employee's Compensation Act) by the dependents of the deceased employee who was engaged by Respondent No.3. The challenge is to the judgment and order passed by the learned Commissioner for Workmen's Compensation, Sangli dated 07.09.2002 dismissing W.C.A. No.8 of 1994.

2. The facts in short are that one Baban Eknath Jadhav was working on the powerloom of Respondent No.3 as Operator and Coolie. While on duty on 03.09.1993, a tempo of Respondent No.1 was brought to the factory for the purpose of transport of cloth bundles. The deceased along with others was moving the cloth bundles in the tempo. While loading the tempo, one of the bundles fell down on the body of the deceased in which he sustained injuries

i.e. his testicles were crushed. Unfortunately, he succumbed to death on 05.09.1993 in the hospital. Since the deceased died during the course of employment his dependent i.e. wife filed W.C.A. No.8 of 1994 seeking compensation.

3. Learned Commissioner dismissed the Application only on the ground that from the evidence, it was not clear as to whether the deceased was workman and as to whether deceased met with an accident in the course of and arising out of employment and rejected the Application holding that the Applicant/Appellant could not prove that there was employer – employee relationship between the deceased. The Court did not consider other aspects about the wages and age of the deceased and amount of compensation as on the first point itself Court held in negative.

4. Learned advocate Mr. Tejpal Ingale has taken this Court through the deposition, copies of medical certificate and other relevant documents. He submits that the fact that the deceased was working with Respondent No.3 is not disputed. This fact is admitted by Respondent No.3. Respondent No.3 himself accepted that deceased was working with him since 31.08.1993 till 03.09.1993. Though there is no record showing entry of the deceased in the factory premises, however, he submits that once it is admitted by Opponent No.3 that deceased was working as Badli Kamgar itself is sufficient to prove the employer – employee relationship. Even if a person employed for a day is to be treated as employee.

5. This Court has seen the deposition of Respondent No.3 i.e. Ramchandra Vishnu Taralekar. In his evidence, he accepted that he has not given reply to the Applicant's/Appellant's notice. Learned advocate further pointed out the evidence of the Applicant/Appellant i.e. wife of the deceased, in which, she has categorically stated that on 03.09.1993, while deceased was on duty, he sustained serious injuries. She received message from Opponent No.3 stating that the deceased was hospitalized in hospital at Vita because of serious injuries received while working. Since the injuries were serious, deceased was referred to Krishna Hospital, Karad. This Court has seen the medical certificate issued by one Dr. Vishwas Deshchougule, who is examined as witness for the Applicant/Appellant. In the certificate, it is stated that deceased aged 35 years was brought to the hospital on 04.09.1993. He was referred to Krishna Hospital, Karad. The Post-mortem report shows that deceased died due to crushing of both testicles.

6. Learned advocate further submits that considering that there is sufficient evidence to show that the deceased died during the course of employment and arising out of course of employment & was 35 years of age. For three days, he was paid salary of Rs.170/- i.e. Rs.57 per day. Per month it comes to Rs.1710/-. Thus, the amount of Rs.1710/- needs to be considered as monthly wages. Half of the wages would come to Rs.855/-, multiplied by Rs.197.6 that is relevant factor, the amount comes to Rs.1,68,948/-. He thus submits that the Appellant would be entitled to this much amount

towards compensation with interest and penalty under Section 4-A of the Act.

7. Learned advocate for Respondent No.2 submits that Respondent No.1 is only the owner of the tempo, which had been to the factory premises of Respondent No.3 for loading the cotton bales. Admittedly, the deceased was working for Respondent No.3 and not for Respondent No.1. The Respondent No.2 is the Insurance Company with whom the tempo of Respondent No.1 was insured. She submits that Respondent Nos.1 and 2 are not liable at all for payment of compensation to Appellant.

8. In spite of service, none appears for Respondent No.3.

9. Considering the reason given by learned Commissioner, it is seen that he has adopted hyper technical approach. Learned advocate for the Appellant relies upon judgment of Hon'ble Apex Court in the matter of ***Maghar Singh Vs. Jashwant Singh*** reported in ***(1998) 9 SCC 134***. The Apex Court considered the purpose and object of the Act and held that no hyper technical approach be adopted. Learned advocate for the Appellant further relies upon judgment of this Court in the matter of ***Area Manager/Sub Area Manager, Western Coal Field Ltd., Chandrapur Vs. Anusuya Narsayya Sirsilla & Ors.*** reported in ***2020(4) Mh.L.J. 268***, wherein this Court held that leaning of the Court has to be towards the person for whose benefit the legislation is made. This Court finds

that the Workmen's Compensation is a beneficial legislation. This Act is enacted for the benefit of poor employees and their family members in case of injuries & of loss of life. Learned advocate further relies upon judgment of Kerala High Court in the case of ***Kuttapan Vs. C. K. Keshavan & Anr.*** reported in ***2001 SCC OnLine Ker 570.***

10. Considering the above position, this Court finds that learned Trial Court has adopted hyper technical approach. Though there were documents viz. medical certificate, evidence of the doctor, Post-Mortem report, the Court has ignored the same. There is also Panchanama drawn, wherein it is seen that deceased was working in the factory of Respondent No.3 at the time of accident. When such was the evidence before the Commissioner, he ought to have considered the said evidence. This Court holds that the evidence on record was sufficient to come to the conclusion that the deceased was working in the premises of Respondent No.3. When deceased was on duty, he sustained serious injuries. Appellant is thus entitled to receive the compensation.

11. At this stage it is necessary to observe that the Ld. Commissioner has not discussed other points about entitlement wages, etc. It was necessary to answer all the points framed. In absence of discussion, this Court had to undertake the task of deciding entitlement of the Appellant. This Court had also thought of remanding the Application. Looking to the fact that the accident

took place in 1993 & still the applicant has not received the compensation this Court refrained from remanding the Application.

12. Considering the calculations in the foregoing paragraph, this Court finds that the Appellant would be entitled to receive compensation of Rs.1,65,948/- along with penalty and interest as provided under Section 4-A of the Employees Compensation Act, 1923.

13. The said liability would be against Respondent No.3 only, as the deceased was in the employment of Respondent No.3. No order is required against Opponent Nos.1 and 2.

14. With this, the Appeal stands allowed in above terms.

15. Pending Interim Application, if any, stands disposed of.

16. Respondent No.3 shall deposit the amount of compensation along with penalty and interest under Section 4-A of the Act from 05.10.1993 till the date of realization.

[KISHORE C. SANT, J.]