Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 577 OF 2020

Rampal Ganpat Yadav & Anr …Appellants
Versus
CTO Logistics Pvt Ltd & Anr …Respondents

Mr TJ Mendon, *for the Appellants.*
Ms Poonam Mittal, *for Respondent No. 2.*

CORAM Kamal Khata, J.
DATED: 12th April 2024

PC:-

1. By this First Appeal under Section 30 of the Employees Compensation Act 1923 ("**EC Act**") the Appellants seek to set aside the order dated 27th February 2018 passed by the Commissioner for Employees Compensation at Mumbai in Application (E.C.A) No – 301/B-54/2013.

2. Brief facts that led to this appeal are as under:

3. The Claimants are the parents of the deceased Dinesh Rampal Yadav ("Dinesh"). He was employed as a cleaner with Respondent No 1's truck MH-04-EB-1141 ("affected truck-1141"). On 28th September 2012 around 9 pm whilst Dinesh was cleaning the front windshield of the affected truck-1141 another truck MH-

04-EB-1370 ("**offending truck**") reversed and collided with affected truck -1141. On account of this collision the cleaner suffered severe injuries and died. The deceased was 24 years old and earned a salary of Rs 8000/- per month accordingly a sum of Rs. 8,73,880/- along with interest at the rate of 12% per annum was claimed as payable jointly from Respondent No. 1 the owner of the truck and Respondent No. 2 the insurance company. The order records that no money has been paid by Respondent No.1 to the Claimants.

4. Mr Mendon for the Appellants submit that the issue no. 3 before the Commissioner was "Whether the Claimants prove that the Respondent No 1 and Respondent 2 were jointly or severally liable to pay the compensation to the Claimants". He submits that the Commissioner has drawn a wrong conclusion and thus the order to that extent deserves to be set aside. He submits that the basis of the first conclusion of the Commissioner that the offending truck -1370 is not owned by Respondent No. 1 is a mere presumption. It is not backed by any pleading or evidence. The basis of the second conclusion drawn by the Commissioner is that the offending truck -1370 was neither owned by Respondent No 1 nor was insured by Respondent No 2 and thus Respondent No 2 was not liable to pay the claim of the deceased is neither pleaded nor contended by Respondent No 2. He therefore submits that the appeal be allowed and the Respondent No. 2 be directed to pay the claim jointly with the Respondent No. 1.

5. *Per contra*, Ms Mittal for Respondent No. 2 submits that the offending truck-1370 has caused the accident. Referring to the written statement she submits that the owner of the offending vehicle is not impleaded as a party. Moreover, the Respondent No.

2 is not liable as the driver of affected truck-1141 was not holding a valid licence. With further reference to the written statement, she submits that the deceased was not employed with the Respondent No. 1. Thus, the Commissioner has rightly observed that the offending truck-1370 owner and insurance company that caused the accident would be liable to the deceased and not the Respondent No. 2 for the claim. She thus submits that appeal deserves to be dismissed.

6. I heard both Advocates.

7. The substantial question of law that arises for my determination is: Whether the finding of the Commissioner was perverse?

8. I find that the Commissioner has erred in coming to the conclusion that the offending vehicle-1370 was not insured. It is evidently a conjecture in as much as there is neither any supporting averment nor any question in cross examination which led the Commissioner to come to that conclusion. It is apparent from the perusal of the papers that it is neither the case of the Appellant nor the case of the Respondent-Insurer that the offending vehicle was not insured. Upon perusal of the cross examination by the Respondent No. 2's Advocate it is evident that no such case is sought to be made out or proved by the Respondent No.2

9. The other conclusion by the Commissioner that the owner of the offending truck-1370 was responsible for the death of the deceased and the affected truck-1141 did not cause the accident therefore the Respondent No. 2 is not liable is neither pleaded nor is contended by the Respondent 2.

10. In the aforesaid circumstances the Commissioner could not have drawn these conclusions. The Commissioner clearly overlooked the fact that this was a claim under the EC Act and not under the Motor Vehicles Act 1988 ("**MV Act**"). It is pertinent to note that under Section 167 of the MV Act, the claimant is entitled to claim under either the EC Act or the MV Act but not under both. Evidently, the Claimant has claimed under the EC Act.

11. The Affidavit in lieu of Examination in Chief of the Claimant states that the deceased was in employment of Respondent No. 1. He was cleaning front windshield of the affected truck -1141 which is not disputed. It is stated that the deceased died whilst on duty of Respondent No. 1. Therefore, the Respondent No. 1 and the Respondent No. 2 would be jointly liable for the claim of Rs 8,73,880/- alongwith 12% interest from the date of the accident till payment or realisation along with penalty.

12. It is evident from the written statement at pages 4 to 6 read with pages 10 to 13 of the compilation of documents that none of the assertions raised in the written statement were proved by the Respondent No 2. Further none of the assertions made by the Appellant-Claimant were disproved by the Respondent No 2.

13. Consequently, there is apparently no basis for the Commissioner to hold that the offending vehicle-1370 was not insured with the Respondent No. 2 and the Respondent No 1 was not the owner of the offending vehicle-1370 and therefore the

Respondent No 2 was not liable to pay the compensation to the Appellant – Claimant. Upon perusal of the FIR annexed at page 29-30 of the compilation of documents it is apparent that the Commissioner has overlooked the statement of the driver of affected truck-1141 that the offending truck-1370 was owned by the Respondent No 1. This statement has remained uncontroverted.

14. The Commissioner apparently has gone beyond the scope and jurisdiction envisaged under the EC Act. He has muddled the case under the EC Act with the MV Act. There is no dispute that the Appellant's claim is under EC Act and not under MV Act. Thus, the order deserves to be set aside.

15. The Supreme Court in the case of *Jaya Biswal v. IFFCO Tokio General Insurance Co. Ltd.*,[1] addressed the issue with regard to "arising out of and in the course of his employment". The relevant paragraphs are extracted herein for ready reference:

> "**23. The liability of the employer, thus, arises, when the workman sustains injuries in an accident which arises out of and in the course of his employment.** In *ESI Corpn.* v. *Francis De Costa* [*ESI Corpn.* v. *Francis De Costa*, (1996) 6 SCC 1 : 1996 SCC (L&S) 1361] , a three-Judge Bench of this Court held as under : (SCC p. 13, paras 28-29)
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> "*28*. In *Dover Navigation Co. Ltd.* v. *Isabella Craig* [*Dover Navigation Co. Ltd.* v. *Isabella Craig*, 1940 AC 190 : (1939) 4 All ER 558 (HL)] , it was observed by Lord Wright that : (AC p. 199)
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> "… Nothing could be simpler than the words "arising out of and in the course of the employment". **It is clear that**

[1]**(2016) 11 SCC 201 : (2017) 1 SCC (Cri) 275 : (2016) 3 SCC (Civ) 775 : 2016 SCC OnLine SC 109 at page 210**

> **there are two conditions to be fulfilled. What arises "in the course" of the employment is to be distinguished from what arises "out of the employment". The former words relate to time conditioned by reference to the man's service, the latter to causality. Not every accident which occurs to a man during the time when he is on his employment, that is, directly or indirectly engaged on what he is employed to do, gives a claim to compensation unless it also arises out of the employment.** Hence the section imports a distinction which it does not define. The language is simple and unqualified.'
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> *29.* Although the facts of this case are quite dissimilar, the principles laid down in this case are instructive and should be borne in mind. **In order to succeed, it has to be proved by the employee that (*1*) there was an accident, (*2*) the accident had a causal connection with the employment and (*3*) the accident must have been suffered in the course of employment."**
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> ***(Emphasis supplied)***

16. In my view, the Claimant has met with all the three conditions laid down by the Supreme Court in *ESI Corpn v Francis De Costa* (supra) namely that there was an accident, the accident had a causal connection with the employment and the deceased died on account of the accident in the course of his employment. The affected truck-1141 was insured by Respondent No 1 with Respondent No. 2. Thus the Respondent No 2 was liable to pay for the accidental death that occurred during the course of employment with Respondent No 1. The Commissioner ought to have considered that the EC Act is a social welfare legislation meant to benefit the workers and their dependants in case of death of workman due to accident caused during and in the course of employment should be construed as such. The Commissioner clearly overlooked this aspect and wrongly rejected the claim against the Respondent No 2. Therefore, in my view this appeal deserves to be allowed.

17. Appeal is allowed. Respondents Nos. 1 and 2 are jointly and severally liable to pay the Appellants the compensation of Rs. 8,73,880/- along with interest @ 12% from the date of accident till the date of payment or realization. The respondent nos. 1 and 2 shall pay the Appellants the aforesaid sum on or before 30th April 2024.

18. All concerned to act upon authenticated copy of this order.

(Kamal Khata, J)