

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1352 OF 2013

Smt. Reshma Raju @ Mohammad Shaikh & Ors. : Appellants/
Original Applicants

Vs.

Shri Pandurang M. Chaugule & Anr. : Respondents

Adv. R. Kundu, for the Appellants.
Adv. Harshada Rane, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 2ND FEBRUARY, 2024
PRONOUNCED ON : 6TH FEBRUARY, 2024

PC. :

1. This Appeal is filed by the Original Applicants in Application (WCA) No.502/B-139/2008. Under challenge is the judgment in the above Application passed by the learned Commissioner for Workmen's Compensation Act and Labour Court, Thane. By way of impugned judgment the Application of the Applicants claiming Compensation under Workmen's Compensation Act came to be rejected.

2. The facts in short are that the husband of present Appellant No.1 and father of present Appellants Nos.2, 3 & 4 died while driving a rickshaw bearing No. MH-04-BC-9579 on 9th December, 2007. The accident

took place at Kapurbawdi Police Station within the jurisdiction of the Khapurbawdi Police Station, Thane. It is the case of the Applicants that the deceased was employed as a driver on the said reckshaw at the time of the accident deceased was getting monthly salary of Rs.4,000/-and his age was 37 years. The Applicants thus claimed compensation of Rs. 3,84,280/- with interest and penalty.

3. The Respondent No.1 alleged owner filed written statement denying contention of the Applicants. It is denied that that the deceased was in his employment as a driver and that he was getting salary of Rs.4,000/- per month. It is also denied that the accident took place during the course of his employment. The opponent No.2 The National Insurance Company also resisted claim by filing written statement. The Respondent No.2 challenged the maintainability of the Application on the ground that the Applicant has not disclosed any cause of action against Respondent No.2.

4. Evidence was laid of the Applicant No.1. She filed an Affidavit along with the documents i.e. photocopy of the driving license. No other evidence was laid before the learned Commissioner.

5. The learned Commissioner observed that the Applicants have

failed to prove the relationship of employer and employee. It is also observed that the Applicants failed to prove that at the time of accident the deceased was getting salary of Rs.4,000/- per month. In the cross-examination of the witness for the Applicants she admitted that there is no documentary proof available to show that the deceased was working in the employment of Respondent No.1 and that he was getting salary. She could not produce any other document except than the Xerox copy of the driving license of the deceased. Though the copy of F.I.R. was on record it was observed that the F.I.R. is only the information of the accident and that is not sufficient to prove the relations as employer and employee.

6. This Court by an order dated August 5, 2015 had admitted the Appeal formulating following substantial questions of law.

“2.-----

i. Whether the Appellant claimant proved the relationship of employer and employee between the deceased Raju Mohammad Shaikh and Respondent No.1 Shri Pandurang M. Chaugule on the date of accident?

ii. If yes, how much compensation the Appellant is entitled?”

7. Learned Counsel for the Appellant vehemently argued the Appeal stating that the Applicants had produced on record copy of the

driving license, there was also a copy of charge sheet filed by the police in the criminal case. In the said charge sheet it has come that the deceased died in an accident while driving a rickshaw. She further submits that the rickshaw was belonging to Respondent No.1. The Respondent No.1 though, filed a written statement has not stepped in the witness box to deny the relationship as employer and employee. Considering that the provisions of the Workmen's Compensation Act, are for the benefit of the poor section of the society, the learned Commissioner ought to have allowed the Application. She submits that even insurance policy is on record, however, the same was not exhibited. She ultimately prayed that at least the case needs to be remanded for fresh consideration by giving opportunity to the Applicants to prove their case.

8. Learned Advocate for the Respondent No.2 strenuously argued the Appeal. She submits that the basic fact that was required to be proved by the Applicant was the relationship between the deceased and the employer. The question of liability on the insurance company would come only thereafter. She submits that though insurance policy is on record. The number of vehicle in the insurance policy an the one recorded in the F.I.R. do not tally. She thus submitted that even if matter is remanded no

purpose would be served. She prays for dismissal of the Appeal.

9. After having both the parties, this Court finds that in the Workmen's Compensation Act, what is necessary to be seen is the relationship between the parties. It was necessary for the Appellants to prove this basic fact. From the Application this Court finds that there are no even sufficient averments to show the basic facts. This Court thus has to answer these two questions.

10. Merely referring a number of vehicle and that the deceased was driving the said rickshaw vehicle by itself is not sufficient to prove the relationship between the parties as employer and employee. Though the legislation is a piece of beneficial legislation still Court has to see whether basic facts are proved or not. Admittedly in this case what is on record is only copy of charge sheet in the criminal case and photocopy of driving license of the deceased. When there is no any other document on record to show the relations between the parties. It is difficult to hold in favour of the Appellants.

11. In view of the above discussion question No.1 is answered in negative. When the answer to question No. i. is in negative question No. ii. would not arise. Thus both the questions are answered accordingly.

12. In view of the above discussion this Court does not find any reason to allow the Appeal. The matter thus stands dismissed.

13. Interim Applications if any pending stands disposed of in view of the dismissal of the Appeal. No order as to costs.

(KISHORE C. SANT, J.)