



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

FIRST APPEAL NO.1041 OF 2017

Venkatesh Ginning & Pressing Mill,
Through : Its Proprietor -
Kiran Vaijinathrao Pensalwar,
Age : 45 years, Occu.: Agriculturist,
R/o. C/o. Venkatesh Ginning & Pressing Mill,
At Manwat, Tq. Manwat,
District : Parbhani

... APPELLANT
(Original Respondent)

VERSUS

Deepak s/o Dattarao Bansode,
Age : 25 yeas, Occu.: Nil,
R/o.: Dr. Ambedkar Nagar, Manwat,
Tq. Manwat, District : Parbhani

... RESPONDENT
(Original Petitioner)

....

Ms. Anjali Dube (Bajpai), Advocate for the Appellant
Mr. Ravindra Nirmal, Advocate fro the Respondent

....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 12/02/2025

PRONOUNCED ON : 07/04/2025

JUDGMENT :

1. The appellant / original respondent in W.C.N.F.A. No.2 of 2014 i.e. Venkatesh Ginning & Pressing, Manwat, has preferred this appeal for challenging the judgment and award dated 08/09/2016, passed in the aforesaid proceeding by the learned Ex-

Officio Commissioner for Employee's Compensation & Civil Judge Sr. Division, Parbhani (hereinafter referred to as 'the learned Commissioner').

2. The respondent / claimant filed the aforesaid proceeding for getting compensation of Rs.8,00,000/- alongwith 50% penalty of the amount of compensation on account of his accident dated 16/04/2013 which took place in the appellant's factory. According to him, on the day of accident at about 8.00 a.m. he along with other workers – Akbar and Kiran Shinde, started work in the factory of appellant. He was doing the work of giving pressure to cotton bale with the help of his legs. At about 3.00 p.m. the finiture of bale was cut down and it fell on right foot of the respondent / claimant. Due to crush injury, the part of his foot was amputated. Therefore, the respondent / claimant sought compensation under the provisions of Workman's Compensation Act. The learned Commissioner after holding an enquiry, granted compensation of Rs.7,86,492/- alongwith interest at the rate of 12% p.a. from the date of accident till its realization. The learned Commissioner also granted penalty to the extent of 20% to the respondent / claimant. Hence, this appeal.

3. The learned counsel for the appellant / employer mainly challenged the impugned judgment on the grounds that there was no employer – employee relationship between the parties and that the learned Commissioner wrongly held that there was 100% loss of earning of the respondent / claimant. On the contrary, the learned counsel for the respondent / claimant supported the judgment and prayed for dismissal of the appeal.

4. Heard rival submissions. Also perused record and proceeding alongwith the impugned judgment.

5. The ownership of the appellant over the factory is not in dispute. Further, the manner in which the accident took place, is also not in dispute. The respondent / claimant has claimed that on the day of the accident, he was working under the appellant / employer. However, the appellant has denied the said fact and claimed that the respondent / claimant was in fact working under the control of one contractor and therefore, there was no employer – employee relationship between himself and the respondent / claimant. It is significant to note that the appellant / employer has in fact challenged the employer – employee relationship and therefore, onus was on him to establish the said fact. It is to be

noted that the appellant / employer could have produced muster roll of his factory and could have easily shown that the respondent / claimant was not working with him at the relevant time. However, no such documents were produced by him. Moreover, his contention that the respondent / claimant was working under the control of one contractor, also does not find place in his written statement. In view of the same and in absence of reliable and trustworthy evidence, it can not be inferred that there was no employer – employee relationship between the appellant and the respondent / claimant.

6. The learned counsel for the appellant vehemently argued that the learned Commissioner has definitely erred in holding that there was 100% loss of working capacity of the respondent / claimant. In this respect, if the impugned judgment is perused, then it is evident that the learned Commissioner had relied on the judgment of this court in the case of ***The Oriental Insurance Co. Ltd. vs. Shaikh Rahim s/o Shaikh Yusuf and another***, 2015(5) ALL MR 230, wherein it was held that though the doctor certified less percentage of disability, but considering the injuries to the claimant therein, he could not continue his job as a Loader-Coolie in the truck and hence, there was 100% disability. However, in the

present case, it is evident that though the respondent / claimant sustained crush injury to his right leg, but there was amputation of toe of his right leg only. It is also important to note that the learned Commissioner did not make any comment as to whether the respondent / claimant was able to do other job for earning livelihood. Admittedly, the work of the respondent / claimant was to be done by the legs only, but considering the fact that he could have done other suitable job, which would have earned him some lesser income. Therefore, there is a scope to hold that he did not lose his working capacity to 100%. Under such circumstance, interference to that effect is only needed in the present appeal.

7. It is significant to note that though actual permanent disability is shown in the medical certificate is less, but considering the job situation of person, his functional disability or working capacity can be more than that. In the present case it would be proper to hold that the respondent / claimant instead of 100% loss of working capacity, must have sustained loss of working to the extent of 80%. Therefore, the compensation of Rs.7,86,492/- needs to be reduced by 20%. As such, the respondent / claimant is now entitled for compensation of Rs.6,29,194/-. There is no need to disturb the other reliefs in respect of the rate of interest and the

penalty awarded by the learned Commissioner. Thus, the order of the learned Commissioner is modified as under.

ORDER

- A) The appellant shall pay to the respondent / claimant compensation of Rs.6,29,194/- (Rs. Six lakh twenty nine thousand one hundred and ninety four only) alongwith interest at the rate of 12% p.a. from the date of the accident i.e. 16/04/2013 till its realization and the appellant shall pay the penalty of Rs.1,57,298/- (Rs One lakh fifty seven thousand two hundred and ninety eight only) to the respondent / claimant.
- B) If the compensation amount awarded by the learned Commissioner is already deposited with him by the appellant, then the compensation granted by this court be paid to the respondent / claimant from the said amount and after paying such compensation amount, the remaining amount, if any, be refunded to the appellant / employer alongwith accrued interest thereon.
- C) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)