



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1298 OF 2005

The Managing Director
Krishna Sahakari Sahakar Karkhana Ltd.

... Appellant.

Versus

Gulabhus Mohamad Mulla (since deceased)
Through LRs. Azad Gulab Hussain Mulla

... Respondents.

Mr. Ruturaj Bapat for the Appellant.
Ms. Seema Chopda for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : February 07, 2025

P.C. :

1. First Appeal has been preferred challenging the judgment dated 22nd February, 2002 passed by the Commissioner for Workmen's Compensation directing the present Appellant to pay compensation at the rate of Rs.25,940/- alongwith interest at the rate of 6% p.m. from the date of incident.
2. The facts of the case are that the Applicant, who was an employee of the Appellant, claimed to have sustained an injury to his right eye in the course of his employment during duty and disability certificate of 40% permanent disability was issued for loss of vision. Claiming 100% loss of earning capacity, a claim was made

for Rs.93,000/-. The employer which is a Sakhar Karakhana denied the allegations, whereas the Opponent No.2 which is the Insurance-Company admitted that the employee was insured, however, denied all other allegations.

3. By the impugned judgment, the Trial Court held that the injury was sustained during the course of the employment while driving the vehicle No.MH-11/A-1536, and that the Claimant was an employee of the Opponent No.1 and by considering the age and the wages, granted the compensation of Rs.25,940/-.

4. Though the First Appeal came to be admitted by order of this Court, there is no substantial question of law which is framed at the time of admission.

5. Perusal of the Appeal memo would indicate that only the grounds have been set out and there is no substantial question of law which is set out in the Appeal memo.

6. Learned counsel appearing for the Appellant would submit that employee had failed to prove that he has sustained the injury during course of employment. He submits that the Trial Court has not accepted the case of the Applicant that he was driving the ambulance which was insured vehicle and has held that the Applicant was driving some other vehicle. He submits that despite

there being no evidence on record to show the manner in which the Applicant has sustained the injury, as there were absolutely no details given, the Trial Court has held in favour of the employee and granted compensation for 100% loss of earning capacity.

7. Drawing support from the decision of the Apex Court in the case of ***Mackinnon Mackenzie and Co.(P) Ltd. v. Ibrahim Mahmmmed Issak [(1969) 2 SCC 607]***, he submits that the burden was upon the Applicant-employee to prove that the injury was sustained by him in the course of his employment and therefore, the burden not having been discharged, no compensation could have been granted. He submits that the compensation which was directed, has been deposited in accordance with the statutory provisions.

8. *Per contra*, Ms. Chopda, learned counsel appearing for the legal heirs would submit that the original-employee is since deceased and the legal heirs are brought on record who are also senior citizens. She would submit that no substantial question of law arises in the present case and therefore, the Appeal should be dismissed.

9. I have considered the submissions and perused the record.

10. An Appeal lies to this Court only on a substantial question of

law. In the present case, the contention of learned counsel appearing for the Appellant is that there is no evidence produced on record to show that the Applicant has sustained injury during the course of employment and without there being any evidence on record, the compensation has been granted. The Appellant, therefore, seeks to assail the findings of fact which have been arrived at by the Trial Court while adjudicating the application for compensation.

11. The judgment of the Trial Court holds that admittedly the Applicant is a driver and the injury or accident is not such, which has taken place due to any disease, which is established from the medical evidence on record and therefore came to a conclusion that the injury sustained is due to an accident for which he is entitled for compensation. The said finding is a finding of fact and there is no perversity which is demonstrated. As such, there is no substantial question of law arising in the present case. First Appeal stands dismissed.

12. Needless to clarify that as the First Appeal has been dismissed, the legal heirs of the Claimants are entitled to withdraw the amount which are deposited.

[Sharmila U. Deshmukh, J.]