

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.26683 OF 2014

Superintending Engineer Maharashtra State
Electricity Distribution Company Ltd.

... Applicant.

Versus

Mrs. Ashwini D. Sable and Ors.

... Respondents.

WITH

FIRST APPEAL NO.450 OF 2016

Nikhil Enterprises and Anr.

... Appellants.

Versus

Ashwini Dattatray Sabale and Ors.

... Respondents.

Ms. Anjali R.S. Baxi for the Appellant in FAST/26683/2014.
None for the Respondents FAST/26683/2014.
Mr. Sanskar Marathe for the Appellants in FA/450/2016.

Coram : Sharmila U. Deshmukh, J.

Date : February 18, 2025

P.C. :

1. Both these Appeals arise out of the same proceedings and hence, common submissions were raised and are being disposed of by this common order.
2. First Appeal has been preferred challenging the judgment dated 8th January, 2014 passed in an Application filed under Section 22 of the Employees' Compensation Act, 1923 (for short, "Act of 1923") declaring the joint and several liability of Opponent Nos.1 to

4 to pay compensation of Rs.6,17,850/- alongwith interest at the rate of 12% p.a. to the Claimants, who are dependents of the deceased.

3. The facts of the case are that the deceased was in the employment of the Opponent No.3, who was the Contractor of Opponent No.2 and was given the contract for the work of erection of pole and connecting wires by Opponent No.1. The work was being carried out at a site near Dapoli District Ratnagiri. On 30th June, 2010, the deceased climbed up the pole for the purpose of carrying out the work, however, unfortunately, he suffered an electric shock and expired. At the time of the accident, the deceased was 31 years old and was getting salary of Rs.6,000/- p.m. as per the pleadings in the Application. The Opponent No.2 had taken out of an insurance policy from the Opponent No.4 which is the United India Insurance Co. Ltd which was in force.

4. The Application came to be resisted by the Opponent No.1, admitting that the said work was outsourced to Opponent No.2 on the basis of work contract and that Opponent No.1 is not liable to pay any compensation or interest to the Applicant. Similarly, the Opponent No.4 denied the employer-employee relationship and denied that the accident was arising out of the course of employment.

5. The necessary issue came to be framed by the Trial Court. The Trial Court noted the definition of the "*employer*" under Section

2 (e) of the Act of 1923 and held that all the four opponents fall within the definition of the "*employer*" under Section 2(e) of the Act of 1923 and are jointly and severally liable to pay compensation. The impugned judgment came to be passed which is challenged by way of the present First Appeals.

6. The Appeals have been preferred under the provisions of the Act of 1923, which provides for an Appeal to this Court only on a substantial question of law. In the present case, the memo of Appeal do not frame any substantial question of law. Learned counsel appearing for the Appellant would submit that question of law which arises in the present case is whether Opponent No.1 can be covered by the definition of "*employer*" under Section 2(e) of the Act of 1923, particularly, whether the admitted position is that the work was outsourced to the Opponent Nos.2 and 3 and the contract between the Opponent No.1 and Opponent No.2 provided for an indemnification by the Contractor.

7. The facts of the case are not in dispute that the Opponent No.1 had outsourced the work of erection of poles to the Opponent No.3, who thereafter sub contracted it to the Opponent No.2 with whom the deceased was employed. It is also not disputed that the death had taken place during the course of the employment on 30th June, 2010.

8. The definition of "*employer*" under Section 2(e) of the Act of 1923, reads as under:

“(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him;”

9. Upon a plain reading of the said definition, it is evident that the definition of the expression “*employer*” take within its fold, the employees of the Contractor and by reason of the said definition the Opponents would be covered by the definition of employer. It would also be relevant to note Section 12 of the Act of 1923, which provides that the principal employer shall be liable to pay the compensation where such compensation is claimed by the employee of the Contractor and Sub-Section (2) of Section 12 of the Act of 1923, provides that where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the Contractor or any other person from whom the employee could have recovered compensation.

10. In light of the above, even if it is accepted that the Opponent No.1 had outsourced the work to the Opponent Nos.2 and 3, the definition of “*employer*” under Section 2(e) of the Act of 1923, covers the Opponent No.1. Further, the provisions of Section 12 of the Act of 1923, makes the principal employer liable for the payment of compensation even to the employees or the workmen

and in event there is any contract between the employer and the contractor, it is open for the principal employer to take necessary steps as provided under Section 12(2) of the Act of 1923.

11. As far as the Appellant in First Appeal No.450 of 2016 is concerned, Mr.Marathe would submit that the Trial Court has absolved the Insurance Company and therefore order is vitiated. Perusal of the impugned judgment indicates that the Trial Court has directed that the Opponent Nos.1 to 4 are jointly and severally liable to pay compensation and Opponent No.4 is only absolved from payment of interest and penalty.

12. In light of the above, there is no substantial question of law which is involved in the present Appeals. Resultantly, the Appeals fail and stand dismissed.

13. In view of dismissal of First Appeals, pending Civil/Interim Applications, if any, do not survive for consideration and the same stands dismissed.

[Sharmila U. Deshmukh, J.]