



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1496 OF 2024

Shagir Ahmed Siddique and Another. ...Appellants.

Versus

M/s. Pasa Interior Decorators and Others. ...Respondents.

Mr. M. S. Dehlvi i/b Delhi & Co., for the Appellant.

Coram : Sharmila U. Deshmukh, J.

Date : February 26, 2025.

P. C. :

1. First Appeal is preferred against the judgment dated 23rd July 2012 passed in Application No. (WCA) 168/B-46/2008 filed by the Appellants seeking grant of compensation under the provisions of Workmens' Compensation Act, 1923 [for short "***the Act of 1923***"].
2. The case of Appellant-Claimants is that deceased was an employee of Opponent Nos.1 and 2 since last 4 years on monthly salary of Rs.4,000/-. Opponent No.2 had purchased a motor bike which was given to the deceased for business purpose and the accident had occurred on 29th December 2007 when the deceased was going for business purpose in which the deceased expired.
3. Opponent Nos.1 and 2 resisted the claim application contending that there was no employer-employee relationship between Opponent

Nos.1 and 2 and the deceased. The deceased occasionally used to take a job of PoP work on the basis of availability of such work and there was assignment of casual work depending upon the availability of such work. The vehicle in question was owned by Opponent No.2 and the deceased desired to drive the new bike and therefore he took the keys and went for a test drive during which he met with an accident on 29th December 2007.

4. The Insurance Company filed its written statement denying the employer-employee relationship and declined any liability under the insurance policy.

5. The Trial Court framed the issues as regards employer-employee relationship and whether death had occurred during the course of employment with Opponent No.1 and answered the same against the Appellants.

6. The Trial Court considered that Applicant No.2 had admitted in the cross-examination that according to availability of work, the deceased used to attend such work. She has further declined that on such casual nature work, the deceased used to accept spot payment and used to leave the place of work without creating any employment with his master. Based on the admissions, Trial Court held that bare denial of casual nature work without documentary evidence to corroborate such relationship cannot be relied.

7. The Trial Court further noted that on 19th December 2007, the Opponent no.2 had purchased the motorbike and that deceased and Opponent No. 2 were friends and were living nearby. The Trial Court further noted that to prove the accidental death, there are no police papers on record except the post mortem report and death certificate.

8. The Opponent No.2 led evidence and maintained that accident was during the test drive of bike as desired by the deceased and non existence of employment. In the cross-examination, Opponent No. 2 admitted that he was not taking signature while making payment of wages. Based on the evidence on record, the Trial Court held that there was no regular payment and no regular employment and dismissed the claim Application.

9. Learned Counsel appearing for the Appellant would submit that under the definition of Section 2(1)(n) of the unamended Act of 1923, workman is a person who is employed in the capacity as specified in Schedule-II of the Act of 1923, whether the contract of employment is express or implied, oral or in writing. He would further submit that Schedule-II of the Act of 1923 refers to the list of persons who are included in the definition of workman and Clause (viii) of the said Schedule refers to an employment in the construction, maintenance, repair or demolition of any building which is designed to be or is or has more than one storey in height above the ground or twelve feet or

more from the ground level to the apex of roof. He would further submit that Kerala High Court in ***Alex V. Chacko v. Commissioner for Workmen's Compensation [2004 III CLR 467]*** held that one need not be a permanent workman under Section 2(1)(n) of the Act of 1923 and even a temporary workman can be a workman within the meaning of Section 2(1)(n). He submits that in the present case, the case of Appellant is that the deceased was doing the work of PoP and therefore the same falls within Clause (viii) of Schedule II of the Act of 1923. He would submit that the substantial question of law which arises in the present Appeal is whether in the light of evidence on record, finding of the trial Court that there was no employer-employee relationship can be sustained.

10. He would further submit that the impugned judgment records that none was present for the final arguments, therefore, matter is required to be remanded back.

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

12. As far as the submission that the matter should be remanded back since the final arguments were not advanced, perusal of the impugned judgment would indicate that the Trial Court has taken into consideration the evidence on record and passed a detailed order on merits. It is well settled that remand cannot be as a matter of course and merely because the final arguments were not advanced, impugned

judgment cannot be quashed and set aside and the matter be remanded for consideration afresh particularly when the detailed findings on merit are rendered based on the evidence on record.

13. Coming to the facts of present case, the case of the Claimants is that deceased was employed by Opponent Nos.1 and 2 in their business activity for last four years on monthly salary of Rs.4,000/-. Considering that claim was based on employer-employee relationship, the burden was upon the Claimants to prove the employer-employee relationship between the deceased and Opponent Nos. 1 and 2 and the fact that accident had taken place during the course of employment.

14. In the cross-examination, Applicant No.2 has admitted that according to availability of identical work, deceased used to attend such work. Further, there is denial of employer-employee relationship by the Opponent No.2. As it was the case of Applicant that deceased was working on monthly salary for a period of almost four years, it was open for the Appellant to examine any co-worker of the deceased to establish that deceased was employed with the Opponent Nos.1 and 2 and was drawing monthly salary, which has not been done.

15. Apart from Applicant No.2 examining herself, there is no evidence produced on record to show that the deceased was employed with the Opponent Nos. 1 and 2. The Opponent No. 2 in his evidence has not only denied the existence of employer-employee relationship

but has also denied that the bike was handed over to the deceased for business activity and that the accident had occurred while going for business activity. On the contrary, the evidence of Opponent No.2 is that deceased desired to test drive the bike which was bought a few days back and the accident had occurred at that time. There is nothing demonstrated from the cross-examination to controvert the evidence of Opponent No. 2 on that aspect.

16. Though learned Counsel appearing for the Appellant would seek to rely upon the definition of workman given under Section 2(1)(n) of the Act of 1923, the same refers to an employment in any capacity whether oral or in writing as specified in Schedule-II. Clause (viii) of Schedule-II refers to an employment in the construction, maintenance, repair or demolition of a building. Thus, Clause (viii) of Schedule-II makes obvious reference to the building construction activity, i.e., building sites. In the present case, it is not even the case of Claimants that the deceased was employed in any building construction activities or maintenance or repair work of building. All that is deposed is that the deceased used to occasionally take job of PoP based on the availability of such job which work can be carried out even in an individual tenement. It is not the case of Claimant that at the relevant time, the deceased was working at some construction site of Opponent No.1. Although it is sought to be contended that it is not necessary

that the deceased has to be a permanent employee and the provisions would cover even a temporary employee, it needs to be noted that the expression temporary employment necessarily refers to a continuous relationship though for a limited duration of employment whereas in present case there was no continuous employer-employee relationship, not even a casual employment as the deceased used to do his independent work and accept payment. Though it was contended that monthly wages were paid, in the cross-examination, the case has been demolished. Another aspect that militates against the case of Claimant is that the evidence does not establish that the death occurred in course of employment. The Opponent No.2 has specifically deposed that the deceased wanted to drive his new bike and had therefore taken the keys from him. The evidence has not been shown to be controverted by the Claimants. The Claimants have not produced any evidence to establish that the deceased on the fateful day was going to a specific place for work and while travelling to place of work, the accident had taken place. There are no details mentioned as regards the work place of deceased. The judgment of ***Alex V. Chacko v. Commissioner for Workmen's Compensation*** (supra) is clearly distinguishable on facts as in that case, the Appellant has admitted that deceased was employed by his supervisor for his construction business. In face of the admission, the High Court accepted his

employment. Permanent or temporary employer-employee relationship implies certain continuity in the relationship although for a short duration.

17. In the present case, the Trial Court on the basis of evidence on record has come to a finding that there was no regular payment and no regular employment. In the context of case put forward by the Opponent No.2 as regards the nature of work and the finding of trial Court is that the deceased was not covered under the provisions of the Act of 1923. The finding arrived at by the Trial Court are the findings of fact and no substantial question of law arises in the present First Appeal. Resultantly, Appeal stands dismissed.

[Sharmila U. Deshmukh, J.]