



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.867 OF 2023

Appellant : Umesh Parasmal Kothari,
 (Ori. Respondent) Aged 50 Years,
 M.K. Motors, H.P. Petrol Pump, Waghapur Road,
 Yavatmal.
 – Versus –

Respondent : Smt. Kalpana Ramesh Kukulwar,
 (Ori. Petitioner) Adult, Occupation – Nil,
 R/o Chapanwadi, Yavatmal.

 Mrs. Mrunal Naik, Advocate for the Appellant.
 Mr. D.C.R. Mishra, Advocate for the Respondent.

CORAM : **M.W. CHANDWANI, J.**

DATE : **21st MARCH, 2025.**

ORAL JUDGMENT :

Heard the learned Counsel appearing for the parties.

02. The appeal challenges the judgment and award passed by the Commissioner under the Employee's Compensation Act, 1923, Judge, Labour Court, Yavatmal on 14/06/2023, thereby allowing the application of the respondent filed under Section 22 of the Employee's Compensation Act, 1923 (*hereinafter referred to as the "Act" for short*) and directing the appellant to pay an amount of Rs.6,39,200/- towards compensation on

account of death of deceased-Ramesh Kukulwar, who was an employee of the appellant.

03. The facts giving rise to the case in a nutshell are as under:

- (i) The respondent, widow of deceased-Ramesh Kukulwar, filed an application under Section 22 of the Act for compensation alleging that her deceased-husband was serving with the appellant as a labourer. On the fateful day, he was proceeding towards the house of the appellant on his motorcycle for handing some cash over to the appellant. On the way, the deceased met with an accident and thereafter succumbed to the injuries. The deceased was 48 years old and was earning a monthly salary of Rs.5,000/- and therefore, a claim for compensation of Rs.3,99,500/- was made.
- (ii) The appellant appeared and resisted the claim *inter alia* denying the relationship between him and deceased-Ramesh as employer and employee. The learned Judge of the Labour Court after recording the evidence allowed the application by passing the impugned judgment and award. Feeling aggrieved with the impugned award, the present appeal came to be filed.

04. Learned Counsel Mrs. Mrunal Naik appearing on behalf of the appellant vehemently submitted that the respondent failed to prove the relationship between the appellant and deceased-Ramesh as of employer and employee. According to her, muster-rolls from April, 2010 to March, 2011 produced by the appellant do not bear the name of deceased-Ramesh as his employee. According to her, these documents have not been considered by the learned Judge of the Labour Court and wrongly proceeded to hold that deceased-Ramesh was an employee of the appellant. She further vehemently submitted that the claim of the respondent was for Rs.3,99,500/-, whereas the learned Judge of the Labour Court awarded a compensation of Rs.6,39,200/-. One of the submissions of the learned Counsel for the appellant is that the accident did not occur out of the employment and therefore, this aspect had to be considered by the learned Judge while passing the impugned award. To buttress her submission, she seeks to rely on the following case laws :

*(1) Shantabai Ananda Jagtap and another vs. Jayram Ganpati Jagtap and another*¹.

*(2) Dyaneshwar Madhukar Jare vs. Mrs. Eshwari Vellapandi Devar & Anr.*².

(3) United India Insurance Company Ltd. vs. Ashok s/o Gulabrao

¹ (2023) 8 SCC 171

² Bombay High Court in First Appeal No.1056/2022

*Kale and another*³.

05. *Per contra*, learned Counsel Mr. D.C.R. Mishra appearing on behalf of the respondent supported the impugned judgment and award and sought rejection of the appeal.

07. Having heard the learned Counsel for the appellant as well as the respondent, the following points arise for my determination:

- i. *Whether the learned Judge of the Labour Court was justified in holding that deceased-Ramesh was an employee of M/s. M.K. Motors, a partnership of which the appellant is a partner?*
- ii. *Whether the learned Judge of the Labour Court was right in granting higher compensation than what was prayed for by the respondent?*
- iii. *Whether the accident occurred in the course of employment or was arising out of the employment?*

08. To prove the relation of employer and employee, the respondent produced a Training Certificate (Exh.U-17). Bare perusal of the Certificate goes to show that the Certificate was issued by the Chief/Senior Regional Manager, Retail Regional Office, Hindustan Petroleum Limited on 27/10/2009 for participation of the deceased in the training program as an employee of M/s. M.K. Motors. The contention

3 Bombay High Court in First Appeal No.33/2007 (Nagpur Bench)

is that the deceased had his left job and he was not an employee of the firm from 1st April, 2010. Since, the alleged accident occurred on 04/06/2010, the appellant cannot be held liable for any accident which occurred after his employment ceased to exist. This prompts me to go through the pleading of the parties, particularly of the appellant. Bare perusal of the written statement goes to show that the appellant denied that deceased-Ramesh was ever working with the firm. The Certificate falsifies the contention made in the written statement as well as on the affidavit during the course of evidence. Now the stand has been taken that the deceased was earlier serving with the appellant and then he left the service that too without any pleading and evidence. No perversity can be seen in the finding which is based on preponderance of probability of the learned Judge of the Labour Court that deceased-Ramesh was an employee of the appellant.

09. Though, the respondent claimed wages at Rs.5,000/- per month, the learned Judge calculated the salary of the deceased as Rs.8,000/- per month and proceeded to calculate the amount compensation at Rs.6,39,200/-. As per Section 4(1)(a) of the Act, the amount of compensation payable to the dependent of the deceased shall be an amount equal to 50% of the monthly wages of the deceased multiplied by the relevant factor or an amount of Rs.1,20,000/-, whichever is more.

Under sub-section (1-B) of Section 4 of the Act, the Central Government may, by notification in Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary. There is no dispute that by notification dated 31/05/2010, the Central Government has fixed monthly wages at Rs.8,000/- per month. As per Section 4(1)(a) of the Act, 50% of the monthly wages of the deceased multiplied by the relevant factor will be the compensation under Section 4 of the Act. Therefore, since on the date of death, the monthly wages were fixed by notification dated 31/05/2010 at Rs.8,000/-, the learned Judge of the Labour Court was right in calculating the amount of Rs.4,000/- which is 50% of Rs.8,000/- while calculating the amount of compensation. Therefore, no fault can be seen with this finding of the learned Judge granting compensation of Rs.6,39,200/- to the respondent.

10. So far as the submission regarding the death of the deceased is concerned, the police papers, particularly Crime Details Form goes to show that deceased-Ramesh was proceeding towards the house of the appellant. Even the First Information Report goes to show that the deceased was admitted in Sanjeevan Hospital by the wife of the deceased. That apart, the cross-examination of the appellant also goes to show that he came to know about the incident on the same day at 10:00 p.m. All

these go to corroborate the version of the respondent that the deceased was proceeding towards the house of the appellant. I do not find force in the argument for the learned Counsel for the appellant that the accident was not arising out of or did not occur in the course of the employment. Therefore, the reliance placed by the learned Counsel for the appellant in the cases of (i) Shantabai Jagtap, (ii) Dyaneshwar Jare and (iii) Ashok Kale (*supra*) will not be helpful to the appellant to absolve him from his liability.

11. In the result, the appeal being devoid of merits, is dismissed. There shall be no order as to costs.

(M.W. Chandwani, J.)