



(1)

FA 393 of 2024-Vandana Misal-odt final

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

FIRST APPEAL NO.393 OF 2024

Appellants
(On R.A.)
(Ori. Applicant No.1)

: 1. Smt. Vandana Maroti Misal,
Age 28 years, Occ. Household .

(Ori. Applicant No.2)

2. Sarthak Maroti Misal,
Age 4 years, Occ. Nil, Minor.
through applicant No.1 guardian
Smt. Vandana M.Misal

(Ori. Applicant No.3)

3. Sau. Tulsabai Gajanan Misal,
Age 46 years, Occ. Household.

(Ori. Applicant No.4)

4. Gajanan Tryambak Misal,
Age 55 years, Occ. Nil
All R/o Yeota, Tq. Chikhli, District Buldana.
All R/o

– Versus –

Respondents
(ON R.A.)
(Ori.Non-Applicant
No.1)

: 1. Raju Ramdas Dukare,
Age 54 yrs. Occ.Stokist and Supplier of
Blasting material, r/o Vir Sawarkar Nagar
Ward No. 2, Gurukrupa Washing And
Greecing Centre Behind Shri Electricals,
Rautwadi, Chikhli, Tq. Chikhli, Dist.
Buldhana.

(Ori. Non-Applicant
No.2)

2. Kaluram Punaram Choudhary,
age 48 years, Occ. Service/Godown
Manager, r/o. Dnyaneshwar, Nagar, Near
Gajanan Maharaj Mandir, Ward No. 24,
Jafrabad road, Chikhli, Tq. Chikhli, Dist. &
Buldana & Pragati Enterprises, Beside
Krushna Super Shopee and Shivrudra
Welding and Furniture, Ramanand Nagar,
Jalna road, Chikhli, Tq. Chikhli, Dist.
Buldana.

Mr. P. N.Varma for the Appellants.
None Appeared for the Respondent no.1 and 2.

<u>CORAM</u>	:	<u>Y.G. KHOBRADE, J.</u>
<u>RESERVED ON</u>	:	27 th April, 2026.
<u>PRONOUNCED ON</u>	:	6 th May, 2026.

JUDGMENT :

1. This is an appeal under Section 30 of the Employees' Compensation Act, challenging the Judgment and Award dated 25.07.2023 passed in WCA No. 8/2019 by the learned Commissioner under the Employees' Compensation Act and Labour Court, Buldhana, whereby compensation of Rs.8,47,160/- was awarded only against Respondent No. 2 but exonerated the Respondent no.1.

2. It is the case of the claimants that, they are the legal heirs of deceased Maroti Misal, who was working at an explosive godown. The said godown was owned and controlled by Respondent No. 1, whereas Respondent No. 2 was engaged as a Manager/Supervisor by Respondent no. 1 for day-to-day affairs and stock management of the godown. On 26.04.2019 at about 9.00 a.m., the deceased Maroti attended duty and stayed overnight due to his work. On 27.04.2019 at about 9.30 to 10.00 am., while performing his duties inside the explosive godown, a massive explosion occurred during the course of his employment, resulting in his instantaneous death on the spot. On 03-05-2019, the father of deceased lodged an FIR with Police Station Khamgaon (Rural), based on which Crime No.0124 of 2019 was registered against both respondents for offences punishable under Sections 304-A and 34 of the Indian Penal Code. Since, the death of deceased Maroti occurred during course of employment, the claimants issued a legal notice on 10-06-2019 by Registered Post through their counsel to the respondents. Respondent no. 1 was served with said notice. However, Respondent no. 2 refused to accept the said notice and returned with postal remarks dated 18-06-2019. According to the claimants, at the time of incident, the deceased was 28 years old and earning salary of Rs.15,000/- per month. Accordingly, the Claimants filed Application (WCA) (B) No. 8 of 2019 under Section 22 of the Employees' Compensation

Act, seeking compensation of Rs.15,88,425/- with 12% interest from the date of incident till it's realization and 50% of penalty under Section 4-A of the Act.

3. On 16-07-2019, the learned Commissioner/Judge, Labour Court, issued notices to both the Respondents, however, they refused to accept the notices. Consequently, by orders dated 11-10-2019 and 10-12-2019, the matter was proceeded ex-parte and without reply of the Respondents. Accordingly, the claimants led oral evidence at Exhibits U-8 to U-10.

4. On 01-07-2020, the learned learned Commissioner/ Judge, Labour Court passed ex-parte Judgment and Award directing Respondent no. 1 to pay compensation of Rs.8,47,160/- with interest @ 12% p.a., from the date of incident i.e. 27-04-2019 but, did not grant 50% of penalty amount. Therefore, the Claimants filed Review Application seeking award of 50% of penalty amount under section 4-A of the Act along with an application no. (F) No. 1 of 2021 for condonation of delay. On 22-09-2021, the learned Trial Court passed an order and condoned the delay, hence, Review Application was registered.

5. The Respondents filed Misc. WCA (F) 12 Of 2020 seeking to set aside the ex-parte Judgment and Award. On 04-01-2022, the learned Commissioner/Judge, Labour Court passed an order on Misc. WCA (F) 12 Of 2020 and set aside ex-parte Judgment & Award and reopened the matter.

Thereafter, Respondent No. 1 filed Written Statement at Exhibit C-13, denying the relationship of employer and employee between him and deceased Maroti. He further contended that, Respondent no.2 was never engaged as Manager/Supervisor by him. Respondent no.1 claimed that, the Respondent no. 2 running a business of explosive blasting in the bore-wells and deceased Maroti was employee of Respondent no. 2 and was paying his salary and other allowances. It was further stated that, on the day of incident, i.e. 27-04-2019, the deceased was present in the godown but he was carrying the mobile phone and matchbox despite such items being strictly prohibited. According to Respondent No 1, the deceased, without informing the watchman, went to attend nature's call with mobile phone and after call was received all of sudden there were explosion and he accidentally died, hence, prayed for dismissal of the application.

6. The Respondent no. 2 filed his written statement at Exhibit C-12 and admitted fact that, the deceased Maroti was his employee and he was paying wages of Rs. 7,000/- per month. He is running business of repairing of Bore-wells machines and supply of materials as well explosion of blast. On 26-04-2019, he visited the godown and at that time the deceased Maroti, Driver was accompanying with him. The deceased Maroti had gone to attend the urination and at that time his phone was rang and as soon as he answered the phone call, leading to explosion and Maroti died in said explosion. Respondent

no. 2 further pleaded that the deceased was not an employee of Respondent no. 1, hence, prayed for dismissal of the application as against Respondent no.1.

7. On the basis of rival pleadings of the respective parties, the learned Commissioner/ Judge, Labour Court framed four Issues at Exhibit O-1. In order to prove the issues, the Appellants/ Claimants led oral evidence at Exhibit U-10 and examined the witness namely Shri Ananta Dyandeo Sor, RTO, Buldhana at Exhibit U-29, Shri Dhanjay Shivaji Jawanjal at Exhibit U-36. The applicants/claimants filed Pursis at Exhibit U-39 stating that, previously, they examined the witnesses at Exhibit at U-9. The witness of the appellants undergone cross-examination conducted on behalf of the Respondents.

8. During the course of trial, the Appellants/claimants proved following documentary evidence as follows:

Nos	Exhibits	Description of documents
1.	U-13	Oral report dated 3.5.2019 lodged with Khamgaon Police station.
2.	U-14	Copy of FIR report dated 3.5.2019
3.	U-15	Spot panchanama dated 3.5.2019
4.	U-16	Post-mortem report of deceased
5.	U-17	Inquest panchanama of dead body of deceased
6.	U-18 to 20	Copies of registered notice, acknowledgments

7.	U-21	Returned postal envelop
8.	U-29	Copy of registered notice with postal receipt.
9.	U-43	Statement of Kaluram Punaram Choudhari(respondent no.2).

9. Respondent no. 2 filed Evidence Affidavit at Exhibit C-23, whereas Respondent no. 1 filed his Evidence Affidavit at Exhibit C-24. Both the Respondents undergone cross-examination conducted on behalf of the appellants.

10. On 25-07-2023, the learned Commissioner under the Employees' Compensation Act and Labour Court, Buldhana, passed the impugned Judgment and Award and partly allowed the claim in the Application WCA No. 8/2019 holding that, the Claimant Nos. 1 to 3 are entitled for compensation of Rs.8,47,160/- with 12% interest p.a., from the date of incident i.e. 27-04-2019 till its realization with 50% penalty amount of Rs.4,23,580/- directing the Respondent No. 2 pay said compensation, however, exonerated the Respondent No. 1 from payment of compensation, hence, this appeal.

11. In the case at hand, substantial question of law arises for determination that, (i) whether the Respondent no. 1 is the owner of the explosive godown, Stockist and supplier of explosive substances? And (ii) whether the Respondent no. 1 is jointly and severally liable to pay

compensation in absence of a direct employer-employee relationship between him and deceased Maroti?

12. Heard learned counsel for the Appellants. Despite service of notice, none appeared for both the respondents. Upon considering the substantial question law it appears that, the present appeal is restricted to extent of exoneration of Respondent no.1 from liability of payment of compensation in respect of death of deceased Maroti during course of employment. Having regard to submissions canvassed on behalf of the appellants, I have gone through the record and proceedings.

13. Needless to say that, the Appellants/claimants filed Exhibit U-10 evidence affidavit of appellant no. 1 Smt. Vandana Maroti Misal and stated that, Respondent no. 1 is a Stockiest and Suppliers of Blasting Material i.e. Magazines/Jilletins used while digging of wells in the Buldhana District. Respondent no. 1 having Godown in Gat No. 54 at Mathani Tq. Chikhali Dist. Buldhana for storage of said blasting material at the time of incident huge quantity of blasting material were stored in the said godown. Respondent no.1 supplying blasting materials to his customers in Buldhana District. Respondent no. 2 was working as Manager/Supervisor of the Respondent no. 1. At the time of incident, her husband (deceased Maroti) was working as jeep driver for transporting the blasting material. She further stated that, since last year her

husband was regularly working with the Respondents. Her husband was helping the Respondent no. 2 while storing and transporting the blasting material and was receiving salary of Rs.15,000/-per month. On 26.04.2019 at about 9.00 a.m., her husband attended duty and in the night time he stayed there because of his duty. On 27.04.2019 at about 9.30 to 10.00 am., her husband (deceased) was performing his duties inside the Explosive Godown. Her husband was not given training for handling the blasting substances and during course of his employment, a massive explosion was occurred, which resulted his instantaneous death at the spot. On 03-05-2019, her father-in-law Shri Gajanan Tryambak Misal lodged a FIR with Police Station Khamgaon (Rural) and informed about the incident. On the basis of said Report a Crime No.0124 of 2019 registered against both respondents for the offences punishable under Sections 304-A and 34 of the Indian Penal Code. At the time of incident, her husband was 28 years old and had possessed a valid driving licence. At the time of incident she was pregnant and delivered the male child on 26-06-2019. After the incident, on 10-06-2019, she and other appellants issued legal notice by Registered Post through their counsel to the Respondents. Accordingly, the Respondent no.1 served with said notice but no reply was given by him. However, the Respondent no. 2 refused to accept the notice and it was returned back with postal remarks dated 18-06-2019. The Appellant no. 1 further stated in her evidence affidavit that, her deceased husband Maroti

was drawing salary of Rs.15,000/- per month and at the time incident, he was 28 years old. After deducting his 50% monthly income and by multiplying by 211.79, they are entitled for compensation of Rs.15,88,425/- (Rs. 15,000 X 50%= Rs. 7,500 X 211.79=Rs.15,88,425/-) and 50% of penalty under Section 4-A of the Act i.e. Rs.7,94,212/- (Rs.15,88,425 + Rs.7,94,212) Total comes to Rs.23,82,637/- with 12% interest from the date of incident till it's realization.

14. Appellant no. 1 undergone cross-examination conducted on behalf of Respondent no. 1. Appellant no.1 has undergone cross-examination conducted on behalf of respondent no.1. In cross-examination, it has been brought on record that her marriage solemnized with the deceased Maroti Misal. However, she has not produced any document to show that respondent no.1 was Stockiest and Godown owner in which explosive substances were being kept. Appellant no.1 admitted that she does not know, who is the owner of Gat No.54, mouza Mathani Tq. Khamgaon, District Buldhana but, she has stated that respondent no.1 Raju Dukare is the owner of Gat no.54. However, on hearsay, she deposed that respondent no.1 is the Stockiest of Jilletin. She further deposed that, she did not possess any document to show that respondent no.2 was working as Manager of respondent no.1. The Appellant no. 1 has denied about non existence of relationship of employer and employee between respondent nos.1 and 2. Appellant no.1 denied the suggestion given by respondent no.1 that her husband was not working as driver with

respondent no.1. The Appellant no.1 further denied about non existence of relationship of employer and employee between respondent no.1 and her deceased husband. Appellant no.1 further denied the suggestion about occurrence of accident due to fault on part of her husband.

15. In cross-examination conducted on behalf of respondent no.2, the appellant no.1 denied that her husband Maroti was working as driver on the vehicle of respondent no.2. However, she admitted that her husband was repairing Compressor and Bore-wells repairs on the say of respondent no.2.

16. The appellants examined the Claimant no.4 Gajanan Trimbak Misal, the father of deceased Maroti, at Exhibit U-8 and CPW 3/appellant no.3 Tulsabai Gajanan Misal, the mother of the deceased at Exhibit U-9. The contents of the evidence affidavit of both witnesses are identical to the evidence affidavit of appellant no.1. The witness Dhananjay Shivaji Jawanjal has filed evidence affidavit at Exhibit 36-A and deposed that the deceased Maroti Gajanan Misal was trained driver. Respondent no.1 Raju @ Rajiv Dukare Patil running business of supply of blasting material of Jillettins in Buldhana District and he is Stockists, Supplier and Contractor for Jillettins/ Magazine. The respondent no.1 is having godown to store blasting material at Mathani, Tq. Khamgaon, District Buldhana at Gat no.54 and had taken the said godown on

rent from one Dhananjay Varale. Respondent no.1 regularly providing the blasting material on demand of the consumers. This witness further stated that respondent no.1 had inquired about availability of the driver in the month of February 2017 at the house of respondent no.1 and at time time he had suggested the name of the deceased. Thereafter, respondent no.1 had asked him to call the deceased to meet him. Accordingly, he along with the deceased Maroti visited the house of respondent no.1. Thereafter, he introduced the deceased and respondent no.1 engaged the deceased as driver and on bargaining payment of Rs. 15,000/- per month was fixed. Accordingly, the deceased Maroti was appointed as driver with respondent no.1 with effected from 1st March, 2017. On 27.4.2019, this witness received a call from his relative informing that at about 9.30 to 10.00 a.m., the deceased died in explosion of blasting material in the said godown. This witness has cross-examined on behalf of respondent no.1. In cross-examination, he stated that, he had no occasion to visit at Gat no.54 at Mathani and he does not remember on what date he had visited there. So also, he has also produced any documentary evidence to show that the deceased Maroti was employee of respondent no.1 and he was receiving Rs.15,000/- per month from him. This witness admitted that deceased Maroti Misal is real brother of his wife and he does not know whether respondent no.1 having the license for storage, supply of blasting material. In cross-examination conducted on behalf of respondent

no.2, it has brought on record that the deceased Maroti was working along with respondent no.2 and was carrying out the work of repairing of Compressor and Bore-wells. However, he denied that the respondent no.2 was paying monthly wages to the deceased.

17. Respondent no.2 - Kaluram Punaram Choudhari has filed evidence affidavit at Exhibit U-23. Respondent no.2 stated in his evidence affidavit that the deceased Maroti Misal was his employee and he was paying Rs.7000/- per month to him. He was carrying business of repairing of boring machines and supplying blasting material. So also, he had availed the services of deceased Maroti Misal. Therefore, the relationship of employer and employee between him and Misal was existing since last one and a half years.

18. Respondent no.1 Raju Ramdas Dukare @ Rajiv Ramdas Patil has filed evidence affidavit at Exhibit U-24. In evidence affidavit, he stated that the deceased Maroti was never his employee and the relationship of employer and employee does not exist between him and the deceased. Respondent no.1 further stated that, the deceased Maroti was employee of respondent no.2, who was carrying business of blasting while digging the wells and repairing of bore-wells machines. On 27.4.2019, respondent no.2 – Kaluram Punaram Choudhari visited at the spot along with deceased Maroti. However, without knowledge of

respondent no.2 or the godown watchman, the deceased went to attend to nature's call (urination) by carrying a mobile phone and upon receiving a call on the said mobile, an explosion occurred. Therefore, he is not entitled to pay any compensation. In cross-examination, respondent no.2 admitted that he did Diploma in Civil Engineering. He admitted that about appearance of his signature on acknowledgment Exhibit U-20 but he did not issue reply to said notice. Respondent no.1 further admitted that he has filed written statement and contents thereof are true and correct as per his information. He admitted about registration of crime against him with Khamgaon Police Station and he has been enlarged on bail. Respondent no.1 further admitted that in para 8 of his written statement that he has falsely stated about non-service of notice dated 12.6.2019. He does not know about explosion occurred on 27.4.2019 in explosive godown but he has admitted about causing of death of deceased Maroti Gajanan Misal in the blast occurred in the Godown. He further stated that, he is not concerned with the said godown. The Non-applicant also denied that deceased Maroti Misal was working with him as driver and he was being paid Rs. 15,000/- per month. He further denied that respondent no.2 - Kaluram was his Manager and relationship of employer and employee between him and deceased were exists.

19. On perusal of pleadings of both the sides and evidence, it *prima facie* appears that, Respondent no. 1 has denied the employer–employee

relationship between him and the deceased. Initially, in written statement, the Respondent No. 2 denied that, the deceased was in his employment but, subsequently, in his evidence and police statement, Non-applicant no. 1 admitted that, the deceased was working under him. Respondent no. 2 has admitted that he himself was acting as Manager with the Respondent No. 1. The evidence available on record, including admissions in cross-examination, it is an undisputed fact that, the explosive godown is owned by the Respondent No. 1 and the deceased was not working with the Respondent no. 2. Therefore, it clearly establishes that, the deceased Maroti was working in Godown of blasting substances, which possessed by the Respondent No. 1. So also, Respondent no. 2 was engaged as the Manager/Supervisor of Respondent No. 1. Therefore, the relationship of “employee” and Employer between the deceased Maroti and Respondent no. 1 established. On the day of incident the Respondent no. 2 was working being a Manager/Supervisor of the Respondent no. 1 and the deceased died due to explosion of blasting materials. Therefore, the Respondent no.1 and 2 are having liability to pay compensation jointly and severally. However, the learned Commissioner passed the impugned Judgment and award holding that, the Respondent no. 2 is the employer of the deceased Maroti, despite evidence available on record proves that, Respondent no. 1 is the employer of the deceased and exonerated Respondent no. 1 without

framing proper issue or recording findings on the employer–employee relationship, thereby giving rise to the present appeal.

20. The Employees' Compensation Act is a beneficial and welfare legislation, which is enacted to protect workers and their families in case of death or injury during employment, and therefore it must always be interpreted in a liberal manner in favour of the Claimants, as held in ***Golla Rajanna vs Divisional Manager, [2017] 1 SCC 45/ 2016 SC 5382***. The law does not require strict proof of employer–employee relationship like in civil suits, and such relationship can be established on the basis of surrounding circumstances, nature of work, and probabilities, as observed in ***Mackinnon Mackenzie & Co. Pvt. Ltd. vs Ibrahim Mahmmmed Issak 1970 AIR 1906, 1970 SCR (1) 869***, wherein it has been held that, if a workman is found at a place where he is expected to be during work, it can be presumed that the accident arose out of employment.

21. Further, in the absence of documentary evidence such as appointment letters, salary slips, or wage registers is not fatal to the claim of the claimants, and compensation cannot be denied on that ground alone, as held in ***Bharagath Engineering vs R. Ranganayaki, AIR 2002 SC 545***, since in many labour cases such formal documents are not maintained. It is also a settled principle that once an accident occurs during the course of employment

*and there is a connection between the work and the accident, the liability of the employer arises immediately, without waiting for any formal adjudication, as laid down in **Pratap Narain Singh Deo vs Srinivas Sabata**.1976 AIR 222,1976 SCR (2) 872.*

22. Further, the term of “employer” has a wide meaning under the Act and includes not only the immediate employer but also the principal employer who has ultimate control and supervision over the establishment and the work being carried out, *as held in **Dharangadhra Chemical Works Ltd. v. State of Saurashtra**,1957 AIR 264, 1957 SCR 152, where the control and supervision test was emphasized. Therefore, a person who owns the establishment and exercises control cannot escape liability by shifting responsibility onto another person.*

23. Moreover, where the employer takes false, inconsistent, or contradictory defences, the Court is entitled to reject such defence and draw an adverse inference against him, as observed in **Kusum Lata vs Satbir**,**FAO NO 4047 OF 2006 P&H HC,Decided On 21.05.2010** and *such conduct in fact strengthens the case of the Claimants. The Courts have consistently held that the technical objections and artificial defences should not defeat a genuine claim of compensation under a welfare statute.*

24. Thus, applying these settled principles, where the accident occurs in the course of employment, the establishment is under the control of one person, and another person is acting under him, both can be held liable, and the Court can impose joint and several liability to ensure that the dependents of the deceased receive just, fair and timely compensation.

25. The learned Trial Court upon appreciation of the pleadings, evidence available on record held that, the accident in question, which resulted into the death of deceased Maroti Misal occurred during the course of employment. It further appears that, the learned Trial Court held that the deceased was engaged in hazardous work connected with the operations of the said godown and incident was occurred on 27.04.2019. However, while adjudicating the issue of liability, the learned Trial Court proceeded to hold that, the Respondent No. 2 was the employer of the deceased and consequently fastened liability exclusively upon him for payment of compensation. However, while recording said finding, the Trail Court has only relied upon oral evidence of the Respondent No. 2 to the extent of employer and employee. However, the Trail Court failed to appreciate the fact that the Respondent no. 2 has made a specific statement in his written statement that, he was working with the Respondent no. 1. Therefore, evidence of the Respondent no. 1 is not in consonance with his pleadings. Needless to say that, once the admission given

in the Written Statement said statement can no be permitted to withdraw in the oral evidence or in alternative no oral evidence can be led contrary to the pleadings. Therefore, evidence available on record suggested that, the deceased Maroti was employee of the Respondent no. 1, who has taken the godown on rent for storage of blasting material.

26. It would be worthwhile to mention here that, in the written statement Respondent No. 2 denied the employer–employee relationship between him and Respondent no. 1. However, in cross examination he admitted that, the deceased Maroti was working under him and his own role was as Manager in the establishment of Respondent No. 1. Therefore, this fact itself proves about relationship of employer and employee between Respondent no. 1 and deceased Maroti. So also, the Respondent no. 2 was the employee of Respondent no. 1.

27. However, the learned Trial Court failed to consider the pleading of Respondents 1 & 2 and the oral evidence led by the parties regarding existence of employer–employee relationship between the deceased and Respondent No. 1. So also, the learned Trial Court fail to independently analysis the issue of control, supervision and ownership of the establishment. The evidence brought on record prima facie indicate that, the explosive substances godown belonged to Respondent No. 1 and all activities were being carried out on his command

not been properly evaluated. The learned Trial Court also failed to consider the evidentiary value of the statement given by Respondent no. 2 to the Police Authority during course of Investigation in Crime No.124 of 2019 registered with Khamgaon Police Station. As per said statement, Respondent No.2 was acting in the capacity of a Manager under Respondent No. 1, which itself proves that, Respondent no. 1 is the employer of the Respondent no. 2 and the deceased Maroti Misal. However, the learned Trial Court failed to draw adverse inference against the respondents for non-production of crucial documents such as license, safety compliance records, wage registers, or any material so to demonstrate the true nature of employment. Therefore, findings recorded by the learned Trial Court exonerating Respondent No.1 appears to be without assigning any evidence available on record and without appreciating legal principles governing determination of employer–employee relationship, particularly the tests of control and supervision.

28. On the face of the record, it further appears that the learned Trial Court failed to consider the definition of the term “employer” includes not only the immediate employer but also the principal employer, who has ultimate control over the establishment and the work being carried out therein and erroneously exonerated Respondent no. 1 from payment of compensation. In effect, the approach of the Commissioner reflects non-consideration of material

evidence on record certainly illegal, bad in law, hence, liable to quash and set aside to the extent of exonerating the Respondent no.1.

29. Upon due consideration of the record, the principles laid down by the Apex Court as well the findings recorded by the learned Commissioner, this Court is on considered view that the substantial questions of law deserves to be answered in favour of the appellants. The Commissioner has committed a manifest error of law by not framing the fundamental issue and decide the same regarding the existence of employer–employee relationship between the deceased and Respondent No.1, despite there being cogent and sufficient material on record indicating that the work was carried out in an establishment owned and controlled by Respondent No. 1 and under his supervision through Respondent No. 2. Therefore, findings recorded by the learned Trial Court are vitiated by non-consideration of material evidence, particularly, admissions and contradictory stand taken by the Respondent No. 2 as well as statement given by him to the Police Authority, which establishes the role of Respondent no.2 as a Manager/agent of Respondent No. 1. Therefore, principle of principal employer’s liability attracted. However, the learned Trial Court exonerated Respondent No. 1 from his liability of compensation without applying the settled tests of control and supervision as well as without drawing adverse inference for non-production of relevant documents, amounts to misdirection in law and results in perversity of findings.

30. It is worthwhile to mention here that, the Employees' Compensation Act is a beneficial legislation, therefore, the term "employer" must receive a liberal and purposive interpretation so as to advance the object of compensation to dependents of the deceased workman, and any attempt to evade liability through technical or inconsistent defences cannot be countenanced. In view thereof, it necessarily follows that, both Respondent Nos.1 and 2 are jointly and severally liable to satisfy the award of compensation. Accordingly, the substantial question of law is hereby answered in favour of the appellants and against the respondents.

31. The findings recorded by the learned Commissioner, to the extent of exonerating Respondent No. 1 are clearly perverse and cannot be sustained in law. A finding is said to be perverse when it is based on no evidence, or when relevant and material evidence is ignored, or when conclusions are drawn contrary to the record. In the present case, the Commissioner has totally failed to consider and appreciate an important material on record, including the admissions and contradictory statements of Respondent No. 2 and proved police statement showing his role as a Manager under Respondent No.1. The Commissioner had also not examined the crucial aspect of control and supervision of the establishment, despite evidence indicating that the explosive godown belonged to and was operated under the authority of Respondent

No.1. Further, no reasons have been assigned for discarding such material evidence, and no proper issue was framed on the employer–employee relationship with Respondent No. 1. By ignoring these vital aspects and by placing reliance on an incomplete appreciation of evidence, the Commissioner has arrived at a conclusion, which is not supported by the material on record. Such an approach results in a perverse finding, warranting interference by this Court in an appellate jurisdiction in view of *Raj Kumar vs Ajay Kumar*, AIR ONLINE 2010 SC 125, wherein it is held that ignoring material evidence vitiates the findings.

32. Insofar as the computation of compensation is concerned, the same is governed by the statutory formula prescribed under the Employees' Compensation Act, wherein, in case of death, the compensation is calculated as 50% of the monthly wages of the deceased multiplied by the relevant factor specified in Schedule IV corresponding to the age of the workman at the time of accident, or the statutory minimum, whichever is higher; similarly, in cases of permanent total disablement, the compensation is 60% of the monthly wages multiplied by the relevant factor. The "monthly wages" are to be taken as proved on record or as per statutory limits, and the "relevant factor" is determined on the basis of the age of the deceased. In the present case, the learned Commissioner has applied the said formula and determined the

compensation accordingly, which appears to be just and proper and does not warrant interference. The appellants are also entitled to interest at the rate of 12% per annum from the date of accident till realization, as mandated under the Act, and in view of the findings recorded by this Court, the said amount along with interest shall be payable jointly and severally by Respondent Nos. 1 and 2. Hence, I proceed to pass the following order:-

ORDER

- I. Appeal is allowed.
- II. The Judgment and order dated 25.07.2023 passed in WCA No.8/2019 by the learned Commissioner under the Employees' Compensation Act and Labour Court, Buldhana, is quashed and set aside to the extent of exoneration of the Respondent No. 1.
- III. Respondent Nos. 1 and 2 are held jointly and severally liable to pay compensation to the appellants.
- IV. The Compensation granted under the impugned Judgment and Award by the learned Commissioner under Employees Compensation Act and Labour Court, Buldhana, is hereby confirmed.
- V. Respondents 1 & 2 jointly and severally shall deposit the entire amount of compensation within 8 weeks before the

(25)

FA 393 of 2024-Vandana Misal-odt final

learned Commissioner under Employees Compensation Act and Labour Court, Buldhana.

- VI. On deposit, the appellants are permitted to withdraw the same in accordance with law.
- VII. R & P be remitted back to the Trial Court.
- VIII. There shall be no order as to costs.

(Y. G. KHOBRADE, J.)