

(2000) 07 BOM CK 0042

In the Bombay High Court

Case No : A.S.C.J.F.A. No. 452 of 1989 with Cross objection (ST) No. 2395 of 1989

Bisumal Nagraj Oswal (Jain)

APPELLANT

Vs

Kunda Ashok Shinde and Others

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Citation : (2000) 86 FLR 862 : (2000) 3 LLJ 1382

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The Applicants before the learned Commissioner for Workmen's Compensation, were the 22 years old widow and a minor child of the deceased, who was 25 years old at the time of his accident on September 30, 1984. Their marriage had taken place in the year 1983. The deceased was survived by the widow and her two months child at the time of the accident. It was her case before the learned Commissioner that on the fateful day of September 30, 1984 the opponent came to their residence and took the deceased with him for work on a scooter. In the evening at 6 p.m., however, the opponent returned to her only to inform that her husband was no more alive as he had died on account of electric shock received by him in the premises of the temple which were being constructed. This news was perhaps a greater shock for the young lady. It appears that the body of the deceased was taken for medical treatment but it was in vain as the doctor had declared him dead. The funeral took place wherein the relatives and friends of the deceased and villagers, including the Sarpanch, and even the opponent, all were present. It was her case that her husband was employed by the opponent as a labourer as the opponent had undertaken a contract from the villagers collectively to build a temple in the village. According to her, the deceased was getting Rs. 900/- per month as wages. She claimed an amount of compensation, initially to the tune of Rs. 27,000/- with interest and

penalty as provided under the law on the basis that the deceased was a workman employed by the opponent and he died due to an accident arising from and out of employment on September 30, 1984. The opponent, therefore, was liable to pay the amount of compensation, interest and penalty. Before filing the said application a notice was duly served on the opponent claiming compensation from the opponent. The opponent had replied the same denying his liability in toto. The opponent pleaded before the Commissioner, in his written statement, that there was no employer-employee relationship between the opponent and the deceased. He totally and flatly denied that the deceased was ever employed by him. It was, therefore, pleaded, at the outset, that he was not a contractor at all to build the temple. He tried to say that he was only a supplier of building material and he was not doing any construction work. The second plea, which he had taken in his written statement, was that there was no contract of service between him and the deceased. He further tried to plead that there was some sub-contractor namely Shri Sajjan Dhiwar, who might have employed the deceased. The next plea, which was taken by him, was that the fateful day of the accident was not a working day at all, being Sunday it was weekly off on which day no work was being done. He has also submitted that on that day the deceased workman was not supposed to come on work and to do any work at the site of the temple. He further tried to say that the deceased had entered the temple from back door as he did not get the key of the lock put on the temple, from the house of the Sarpanch, or from the wife of the Sarpanch, and therefore, he climbed into the temple from its back side and got himself electrocuted. The very next in genuine plea, that was taken, was that the deceased workman did not satisfy the criteria or the definition of workman given u/s 2(1)(n) read with Entry 8 of Schedule 11 of the Act. It was submitted on his behalf that the height of the temple was not 12 feet and, therefore, in any case the inclusive definition given in item 8 of Schedule II was not satisfied and, therefore, the Applicant, widow of the deceased, was not entitled to get any compensation. Shri P.K. Joshi, Advocate for the opponent further continued to argue vehemently that the age of the deceased was not proved and that no documentary evidence was produced before the Commissioner in respect of his age. According to him, the age, which is recorded on the death certificate to be 24 years, was given by someone at the time of funeral and, therefore, it cannot be believed. It was also pointed out by Shri P.K. Joshi that originally the claim filed was for Rs. 27,000/- and the learned Commissioner, accepted the oral prayer on behalf of the Applicant to enhance the amount of compensation from Rs. 27,000/- to Rs. 75,765/- on the ground that there was an amendment in the Workmen's Compensation Act effective from July 1, 1984. enhancing the amount of compensation under the Act. The amount of compensation payable to the applicant was, thus, enhanced by the learned Commissioner from Rs. 27,000/- to Rs. 75,765/- applying the amendment as the accident had taken place after the enforcement of the said amendment. Shri P.K. Joshi has argued that there was no amendment application in writing, made on behalf of the Applicant and, therefore, the Commissioner suo-motu could not have enhance the amount of compensation. He also submitted that there was no

evidence adduced on behalf of the applicant to substantiate her claim and, therefore, the entire order of the learned Commissioner was vitiated and deserves to be quashed and set aside.

2. On the basis of the pleadings, the learned Commissioner framed the following issues and, after recording oral and documentary evidence, answered all of them in favour of the Applicant.

"4. On the pleadings of both the parties the following issues were framed at Exh. 03:

ISSUES

- 1) Do the Applicants prove that Ashok Maruti Shinde died by accident arising out of and in the course of his employment with the opponent?
- 2) Are the applicants dependents on the deceased workman?
- 3) Whether the Applicants are entitled to receive the death compensation, if so, to what amount?

I record my findings thereon as follows:

1. Yes
2. Yes
3. As per final order."

3. The Applicant examined herself and the Sarpanch of the village and a co-workman of the deceased on the issue of employer-employee relationship. The Applicant sworn on oath that her husband was employed as a labourer with the opponent and was doing the work of construction of the temple in the village. She has also given a figure of Rs. 900/- as wages which her husband was getting from the opponent. She has also sworn the age of the deceased to be 24 years at the time of his death. She has also narrated how the opponent himself had come to their residence to take her deceased husband for work at the site of the temple on September 30, 1984 and how the opponent himself had come to inform her about the death of her husband on that day at about 6.00 p.m. In cross examination she withstood the searching cross examination on behalf of the opponent. Even her witness, the Sarpanch, has sworn on oath that the work of construction of the Vithal Mandir in the village was being done by the opponent on contract. He has also stated that the opponent was engaging the labourers and that the deceased was working for him and he died due to the electric shock at the site. In his cross examination nothing substantial could be elicited. The next witness was a co-workman of the deceased, who also sworn that the deceased and himself, both were working for the opponent and that the deceased was getting monthly wages between Rs. 800 and Rs. 900/-. He has also added that they both were working at the site on September 30, 1984. He has also confirmed that the deceased died due to electric shock between 10.00

and 11.00 a.m. on that day. He has also added that there were 8 to 9 persons working for the opponent. He has also added that one Sajjan Dhiwar was also coming on the site on behalf of the opponent. He, however, added that they all were working under the opponent's supervision and Shri Sajjan Dhiwar was not giving any instructions to them in respect of the work. In rebuttal the opponent examined himself to say that there was no relationship of employer-employee between himself and the deceased. He, however added that the deceased was working with the said Sajjan Dhiwar, who was a labour contractor. According to him, he was not present at the site and that the father of the Sarpanch was getting the work done through the contractor. He repeated his plea taken in the written statement that he had no concern with the work of construction of the temple and that he was only supplying building material, such as centering plates and supporting poles. He flatly disowned his liability to pay any compensation to the applicant. In his cross examination he replied that he was not maintaining any muster roll of the employees engaged by him. He repeated that he had not engaged the workers. He denied the fact that he had gone to the house of the deceased in the morning of the day of the accident to call him. He repeatedly repeated that he had no concern, whatsoever, with the deceased and, therefore, he was not liable to pay any compensation.

4. On the basis of the aforesaid evidence the learned Commissioner has held that the deceased was employed by the opponent and that he was in his employment on the fateful day of the accident i.e. September 30, 1984. He has also discarded the theory of the opponent that there was no employer-employee relationship between him and the deceased. Another crucial fact, to which the learned Commissioner has given emphasis, was that in spite of a specific direction to the opponent to produce the wage and attendance register for the relevant period they were not produced by the opponent on a specious plea that they were destroyed. On behalf of the Applicant an application was filed before the learned Commissioner for a direction to the opponent to produce the muster rolls and the wage register. The learned Commissioner had issued a direction to the opponent to produce those documents. In his say to the said application the opponent categorically mentioned that those documents were destroyed. It definitely means that he had maintained such documents and even the law requires that such documents must be maintained. It is significant to note that in his evidence he categorically denies the fact that he ever maintained any such muster rolls, his answer was "I do not maintain the muster roll of the employees engaged by him." I have not engaged the workers." From this sentence itself it is clear that the opponent has hardly any regards for the truth. If he had not maintained the muster rolls there was no question of such documents having been destroyed, to plead his inability to produce them before the Court. His difficulty started when he took the false plea of absence of employer-employee relationship between him and the deceased workman. To continue to cling to such a false plea, he has been trying to build up a weak case for himself without realising that he was digging his own grave of all false pleas. There was ample evidence before the

learned Commissioner to hold that the deceased was in the employment of the opponent on the date of the accident. In the villages and the small petty employers rarely issue any appointment orders. Therefore, there is no question of there being any other documentary evidence to prove the employer employee relationship. It was, therefore, necessary and relevant for the applicant to have called upon the opponent to produce the attendance and wage registers. The opponent did not produce them in spite of a direction from the learned Commissioner to that effect. These are the documents which every employer, governed by the law, is bound to maintain and according to the say filed by the opponent to the said application it is clear that he did maintain such documents but did not produce them before the learned Commissioner as those documents would have gone against him on the point of employer-employee relationship. The learned Commissioner, has therefore, rightly drawn an adverse inference against the opponent on that point. From those documents, even the figure of wages also would have been proved. The opponent has been denying not only the relationship with the deceased but also the amount of wages paid by him and that is the natural sequence to me denial of the employer-employee relationship with the deceased. The opponent has been trying to build the edifice of the temple on all false pleas and get himself buried under the same. There is absolutely no evidence or material to disbelieve the case of the Applicants and the evidence adduced by them before the Court. There is no reason why the Sarpanch or the co-worker should come and depose falsely against the opponent. In these circumstances, I do not find any illegality or infirmity in the impugned judgment and order of the learned Commissioner on any of the points vehemently canvassed by Shri P.K. Joshi before me. His argument that the Commissioner could not have awarded compensation more than prayed in the claim application, without any formal amendment in the application. It appears that a prayer was made across the Bar on behalf of the Applicants on the basis of the amendment which came into force from July 1, 1984 revising the amounts of compensation in the Schedules under the Act. The relevant dates are not disputed. The amendment was brought into force on July 1, 1984, and therefore, on the date of the accident the Applicants were entitled to get the enhanced amount of compensation under the amended provisions of the Act. The applications under the Workmen's Compensation Act cannot be equated with the suits for property to apply all such provisions strictly. No one can lose sight of the fact that the Workmen's Compensation Act was enacted for the welfare and benefit of the employees and their dependents after their death in the employment accidents. One glance at the Act would be enough to conclude that no such pedantic and technical approach can be taken to interpret the provisions of the Act and to decide such cases. It is not that the amended provisions were not at all applicable to the facts of the present case. The learned Commissioner has rightly granted the enhanced amount of compensation without insisting for a formal amendment in the claim application. He has, however, directed the applicants to pay the enhanced Court fees for the enhanced claim. The learned Commissioner has rightly decided the entire application and has given cogent

reasons for his conclusions, based on the evidence and material on record before him. There is no substantial question of law either, in the present appeal. The learned Commissioner has decided the matter purely on facts and evidence. There is absolutely no reason for me to interfere with the well reasoned order of the Commissioner. The present Appeal, therefore, deserves to be dismissed and the same is dismissed with no order as to costs.

5. The Applicants have filed their cross-objections in the above appeal to claim 50% penalty and interest from the date of the accident. The learned Commissioner has refused to grant any penalty in exercise of his powers under the Act. He has also refused to grant interest from the date of the accident. However, he has directed the payment of interest from the date of the application. There is hardly any difference of 3,4 months. Even though I have dismissed the appeal filed by the opponent I cannot ignore one fact that the opponent was a small and petty contractor, who can be called as self-employed person. Shri P.K. Joshi has pleaded fervently and emotionally that, to deposit the amount of compensation the opponent had to sell the ornaments of his wife as he had no money to deposit the amount of compensation for filing the present appeal. Shri A.H. Joshi, advocate for the Applicants, however, disputed the said submissions. From the whole material on record and in the interest of justice it will not be proper to grant any penalty payable by the opponent. In view of the amendment he is required to pay more than double the amount of compensation. The opponent being a small man I do not wish to oppress him any more to corner him to commit suicide. I am taking this lenient view mat in spite of his hardship he has already deposited the whole amount and the Applicants have acted upon the order passed by the learned Commissioner. The cross objection, therefore, filed by the Applicants, is dismissed. No orders as to costs.