

(2013) 08 BOM CK 0259

In the Bombay High Court

Case No : C.A. No. 1869 of 2013 in F.A. ST. No. 4890 of 2013

Chunnilal and Sons

APPELLANT

Vs

Sunita Ramkishan Kamble and Others

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Citation : (2014) 1 LLJ 106 : (2014) 3 LLN 62

Hon'ble Judges : M.T. Joshi, J

Bench : Single Bench

Advocate : S.S. Kazi, for the Appellant; P.G. Sontakke, for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J.—Heard both sides. The present first appeal has arisen out of the award passed by the learned Commissioner under the Workmen's Compensation Act, directing the present applicant/appellant to pay compensation to the present respondents for the death of deceased Ramkishan. As there is delay in filing the first appeal, the present civil application for condonation of delay is filed.

2. For the reasons stated in the application, the delay is condoned. The application is accordingly disposed of.

3. The first appeal stands admitted, on registration thereof, on the following question of law:

Whether the learned Commissioner committed patent error in concluding that there was employer and employee relationship and death of the deceased occurred during the course of employment?

Print of the paper-book is dispensed with. By consent of learned counsel for the parties, the appeal is taken up for final hearing.

4. The respondents came with a case before the learned Commissioner that deceased Ramkishan was working with the present appellant on his petrol pump

for the monthly wages of Rs. 6000/- per month. He was 28 years old. On 28.10.2003, while the deceased was sent to collect the bills of the present appellant from his customers, at that time at about 9.00 p.m., he suffered vehicular accident and died. Therefore, the compensation was sought.

5. The present appellant came with a case that there was no employer-employee relationship at all as pleaded by the respondents. It was further submitted that the death did not occur during the course of employment, nor the deceased was getting any salary from the present appellant.

6. Before the learned Commissioner, the immediately recorded papers like the FIR, panchanama of spot of occurrence recorded by the police while making the inquiry, were pressed into service, alongwith oral evidence from the side of the respondents. These papers i.e. death report at Exhibit U-11 showed that the deceased was working over the petrol pump as worker. The certificate, passed by the Police Inspector at Exhibit U-10 was also pressed into service.

7. The present appellant also examined two witnesses who are working on the petrol pump of the present appellant and deposed that the deceased was not working on the said petrol pump.

8. Considering the rival evidence on record and more particularly the immediately recorded document by the police, the learned Commissioner came to the conclusion that the Employer-Employee relationship existed between the present appellant and the deceased.

9. As regards the allegation as to whether the deceased has died during the course of employment i.e. while he went for collecting the dues of the employer from the customers, the learned Commissioner believed the oral version of the present respondents and finding that the version of the witness examined on behalf of the present appellant denying even the Employer-Employee relationship as not believable, disbelieved their entire version. Therefore, out of two oral versions, the learned Commissioner accepted the version of the present respondents.

10. Mr. S.S. Kazi, learned counsel for the applicant/appellant submits that there was no evidence at all to show that the deceased has died during the course of employment and he had suffered vehicular accident 10 kms. away from the petrol pump of the appellant and died. In the circumstances, he submits that the learned Commissioner has committed patent error in appreciation of the evidence.

11. On the other hand, learned counsel Smt. P.G. Sontakke for the respondents submits that the learned Commissioner has considered all the oral as well as documentary evidence on record and came to a definite conclusion on the basis of sound rules of evidence. In the circumstances, she submitted that the appeal be dismissed.

12. Having considered the rival pleas, in my view, since the learned

Commissioner has considered each and every aspect of the evidence and material on record, a definite conclusion is drawn that the deceased was sent for collecting the dues of the appellant - employer and while carrying the duty, he died in a vehicular accident. Therefore, it cannot be called that the impugned judgment of the learned Commissioner is perverse.

13. Mr. S.S. Kazi, learned counsel for the applicant/appellant relied on the ratio laid down in the following cases:

(i) Oriental Insurance Company Ltd. v. Daivshala W/o. Shahu Jadhavar and Others.

(ii) Superintending Engineer, M.S.E.B. Circle Office and Others v. Susheela V. Dhongade and Others.

(iii) Dockendale Shipping and Another v. Jeevanbhai Ramji Tandel Bali Phalia Kolok Pardi.

(iv) Arjun Gangappa Kore v. Nirmal Bhagchand Bothra and Others.

14. In the case of Oriental Insurance Company Ltd. v. Daivshala W/o. Shahu Jadhavar and Others (supra), the another learned Single Judge of this Court, relying on the ratio in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, , had an occasion to interpret as to what is meant by the term "arising out of...his employment". In that case, the deceased watchman of a sugar factory, was proceeding to the factory from his village and at that time, one unknown vehicle gave dash to him. In the circumstances, holding that there is no nexus between the employment and the death of the deceased, this Court has held that the compensation cannot be awarded.

15. In the case of Superintending Engineer, M.S.E.B. Circle Office and Others v. Susheela V. Dhongade and Others (supra), the facts were that the deceased who was appointed as a clerk, was directed to work as a meter-reader with the appellant therein. A transfer order was served upon him and on receipt of the said transfer order, he suffered heart-attack in the premises of the appellant - employer and ultimately, died. He had also sought leave as he was knowing that a transfer order would be served upon him. In those circumstances, the Court held that the deceased had not died during the course of the employment.

16. In the case of Dockendale Shipping and Another v. Jeevanbhai Ramji Tandel Bali Phalia Kolok Pardi (supra), the deceased was working as a seaman and as such, while he was at sea, he suffered cerebral stroke and hemiplegia which ultimately took his life. It was found that the deceased was not on duty at the time he has actually died. There was no evidence on record to show that he suffered the disease due to the nature of the work performed by the appellant therein. Therefore, finding no nexus between the illness suffered by the appellant and the nature of the work performed by him, ultimately, the application came to be dismissed.

17. In the case of Arjun Gangappa Kore v. Nirmal Bhagchand Bothra and Others (supra), this Court found that the findings of the Commissioner were not supported by any evidence on record and therefore, the finding was in the nature of perversity and in the circumstances, it was observed that such a finding can be challenged as it raises a substantial question of law.

18. The reading of above authorities at serial Nos. (i) to (iii) would show that it was definitely established that there was no nexus between the employment or the nature of employment and the death or illness caused to either to the deceased or the applicant/appellant therein. In the present case, the Respondent No. 1 established the case that while the deceased was on his duty to collect the dues from the customers of the appellant, he met with a vehicular accident and has died. This itself would be sufficient to show that the deceased has died during the course of employment. Therefore, on facts, the ratio laid down in the authorities (cited supra) is not applicable to the present case.

19. In the case of Arjun Gangappa Kore v. Nirmal Bhagchand Bothra and Others (supra), the appreciation of the evidence made by the learned Commissioner was found to be not supported by evidence on record and in the circumstances, by observing that the findings arrived at by the Commissioner are perverse, this Court ultimately held that a challenge to such finding would be tenable as it raises substantial question of law. There is no dispute about the principle, but the facts as already appreciated by this Court and the conclusion drawn would show that on the basis of evidence on record, the learned Commissioner, in the present case, has come to the conclusion. There is no perversity found in the appreciation of the evidence. In the circumstances, the appeal fails. In the result, the appeal is dismissed without any orders as to costs. On the request of Mr. S.S. Kazi, learned counsel for the appellant, ad-interim relief granted earlier by this Court to continue for a period of twelve (12) weeks from the date of this judgment. Consequently, Civil Application No. 6050 of 2013 does not survive and stands disposed of accordingly.