
(1973) 02 GUJ CK 0002
In the Gujarat High Court
Case No : F.A.O. No. 459 of 1970

Smt. Vimlaben Vashrambhai and Others	APPELLANT
Vs	
The Gujarat Housing Board and Others	RESPONDENT

Date of Decision : 16-02-1973

Acts Referred:

Workmens Compensation Act, 1923 — Section 12(1), 12(3), 2, 3, 4

Citation : (1975) ACJ 84

Hon'ble Judges : S.N. Patel, J;D.A. Desai, J

Bench : Division Bench

Advocate : G.C. Patel, for M.C. Shah, for the Appellant; J.B. Patel, for the Respondent

Final Decision : Allowed

Judgement

S.N. Patel, J.—This appeal is filed by the original applicants against the decision in the Workmen Compensation Application No. 57 of 1968 decided on 23rd April 1970 by the learned Civil Judge. (Senior Division), Baroda, dismissing the application with costs.

2. Shortly stated the facts are that the applicant No. 1 was a widow of the deceased workman Vashrambhai and the applicants Nos. 2 and 3 were the minor children of the deceased workman. The deceased workman Vashram was employed by the Opponent No. 2 through the Opponent No. 3 for constructing the buildings of the Opponent No. 1. On 24th November 1967 at about 10 a.m. while said Vashrambhai was carrying on masonry work of plastering the outer wall of the second floor in the course of his employment, he fell from the height of nearly 30 ft. and met with serious injuries which resulted in his death. The Gujarat Housing Board in the course of and for the purpose of its trade or business contracted with the opponent No. 2 for the execution of the work of the construction of the residential buildings. The opponent No. 1 had accepted the tender of Messrs Swadhin Builders, Engineers and Contractors-opponent No. 2 and entrusted them the job of constructing the buildings for the Opponent No. 1

near Race Course, Baroda-7. In the execution of the work of construction of the buildings under the said contract, the Opponent No. 2 had employed the deceased Vashrambhai Harjibhai as a mason through the Opponent No. 3 Messrs Pravin Brothers Engineers and Contractors. Said deceased Vashrambhai Harjibhai was entrusted with masonry work of the said buildings. Deceased Vashrambhai Harjibhai sustained the following injuries:

1. Two contused lacerated wounds 1" x 1/4" x scalp deep over occipite parietal region in mid-line.
2. Contused lacerated wound 1/2" x 1/4" x scalp deep, just adjacent to above injury.
3. Multiple abrasions over fore-head.
4. Abrasions over right hand and right elbow.
5. Abrasions over left hand and forearm medially.
6. Fracture dislocation 05 over 06 quadraplegia: paraplegia lower limbs paraparesis upper limbs.

3. These injuries proved fatal. The deceased Vashram Harjibhai expired on 25th November 1967, in the S.S.G. Hospital, at Baroda. The monthly wages of deceased Vashram were Rs. 240/-. The deceased was aged about 26 years at the time of the accident. A notice was served on the Opponents on 6th June 1968 and on 14th July 1968. The applicants claimed a lump sum payment of Rs. 8,000/- with interest at the rate of 6 per cent. The applicants also claimed the penalty amount of Rs. 4000/-.

4. The application was resisted by the opponents. The Gujarat Housing Board-Opponent No. 1 filed the written statement Ex. 14. In paragraph 10 of the written statement, the opponent No. 1 admitted that the opponents Nos. 2 and 3 were its contractors. However, it was denied that Vashram was the employee of the Opponent No. 2 through the Opponent No. 3. It was denied that Vashram was carrying masonry work in the course of his employment. It was denied that Vashram fell from the height of about 30 ft. and received serious injuries resulting in his death.

The Opponent No. 2 appeared through an Advocate in the proceedings but the opponent No. 2 had not filed any written statement. The Opponent No. 3 filed the written statement at Ex. 4. The opponent No. 3 denied that the deceased Vashram was employed as a workman by the Opponent No. 2 through the Opponent No. 3. It was denied that Vashram carried on masonry work in the course of his employment with the Opponent No. 2 or 3. It was denied that he fell from a height of 30 ft. and sustained injuries and that his death was the result of the injuries sustained by the fall. It was denied that the wages of the deceased Vashram were Rs. 240/- per month.

5. The learned Civil Judge, (Senior Division), Baroda, held that deceased

Vashram was not an employee of the Opponent No. 2 through the Opponent No. 3. It was not proved that Vashrambhai was doing masonry work with the Opponent No. 3 and he fell from the height of 30 ft. and met with serious injuries resulting in death in the course of his employment. The learned Civil Judge did not decide the point No. 3 with regard to what were the wages per month of deceased Vashram. Deceased Vashram was not a workman within the meaning of the Act. In view of his aforesaid findings the learned Civil Judge held that the applicants were not entitled to get any compensation from the Opponent Nos. 1, 2 and 3. In the result, the learned Civil Judge dismissed the application with costs. The present appeal is filed by the applicants against the aforesaid decision of the learned Civil, Judge (S.D.), Baroda.

6. We have got evidence of Vimlaben Vashram Harji Ex. 28. She has deposed that Vashram was her husband. Vashram Harji worked as a mason. Vashram was doing the work of plastering of outer wall of the house on the third floor. At that time he fell down from the Talakh" from a height of about 25 to 30 Feet from the ground. She was working as a labourer in that house. She gave mixtures of cement in a "Tagara". Vashram was injured. He was taken to the S.S.G. Hospital. He died on 25th November 1967 in the Hospital. He died due to the injuries caused by a fall from the "Palakh". Vashram was paid Rs. 8/- per day as daily wages. They were working since last 8 to 10 months before the accident. The houses were of the Opponent No. 1, The houses were constructed on the Race Course Road. In her cross-examination she deposed that she and Vashram had got the wages from the Opponent No. 1. She deposed that she did not know whether the Doctor had asked about the monthly income of Vashram. Her husband was never sick before his death. Her evidence that she was working at the time when Vashram fell down from "Palakh" is not challenged. Her evidence also that the houses where deceased Vashram and she worked on the day of the accident were of the opponent No. 1 is not challenged. Her evidence also that Vashram fell down from Palakh while plastering outer wall, is not challenged, from her evidence it is established that at the time of the accident Vashram was working as an employee for the construction of the houses of the Opponent No. 1. Vashram was working at the house of the Opponent No. 1 for a period of 8 or 10 months. It is also clear from her evidence that Vashram was paid at the rate of Rs. 8/- per day. It is also established from her evidence that Vashram sustained injuries as a result of a fall from "Palakh" while plastering the outer wall of the house of the Opponent No 1. He was admitted to the S.S.G Hospital, Baroda and he died in the S.S.G. Hospital, Baroda on 25th November 1967.

7. Zaverbhai Gokalbhai is examined at Ex. 51. He has deposed that he was working as a mason in a building of the Gujarat Housing Board near Pankaj Society. Race Course Road, Baroda. He got Rs. 10/- per day. He was staying on the site. Vashram with his wife and children was staying with him Vashram was doing the work of a mason in the building of the Gujarat Housing Board. He got Rs. 8/- perday The wife of Vashram works as a labourer. Vashram fell down from a "Palakh" at the height of about 30 to 35 feet when he was doing plaster work

on the third floor of the building of the Gujarat Housing Board. He died on the next day. He was drinking water on the ground floor of the building when the accident took place. This witness was cross-examined by the Opponent No. 1. However nothing is brought out in his cross-examination to shake his credit. In cross-examination on behalf of the Opponents Nos. 2 and 3, the witness deposed that he had no document to show that he was working as a mason in the building constructed by the Opponent No. 3. He has also deposed that his statement was not recorded by the police. The witness cannot have any documentary evidence to show that he was working as a mason in the construction of the building. The evidence of this witness also supports the evidence of Dai Vimlaben Vashram that the deceased Vashram was working as a mason for the building of the opponent No. 1 and he sustained injuries as a result of a fall from the "Palakh" while plastering the outer wall of the building and he died on the next day.

8. Ishwarbhai Gusabhai is examined at Ex. 56. This witness has deposed that on 24th November 1967 he was working as a mason. Vashram Harji was working with him as a mason in the same building. Vimlaben was wife of Vashram Harji. She was also working as a labourer on that day. Vashram Harji fell down from Palakh when he was plastering the outer wall of the building on the third floor. He was taken to the Hospital at Baroda. He died next day. He got Rs. 8 - per day and Vashram also got Rs. 8/- per day His statement was recorded by the police. He denied that Vashram had told in the Hospital that his monthly income was Rs. 80/-. He denied that the contractor was giving a card to the workers. He deposed that 12 Bungalows of the Housing Board were constructed. Nothing is shown in the cross examination of this witness to shake his credit. The evidence of this witness also corroborates the evidence of Vimlaben-wife of Vashram.

9. Isharsingh Dalpatsingh, the Police Jamadar is examined at Ex. 60. He has deposed that he was serving in the Sayajiganj Police Station on 24th November 1967 as the Police Jamadar. He retired since about 8 to 9 months. He had prepared a panchnama of the scene of accident. The panchnama was signed by him and the Panchas had also signed in his presence. The panchnama is produced at Ex. 61. He has also further deposed that he has written the inquest report Ex. 62. The Inquest Report Ex. 62 was signed "by the panchas in his presence. From the evidence of this witness the panchnama of the place of the accident Ex. 61 and the Inquest panchnama Ex. 62 are proved. The Panchnama Ex. 61 of the place of the accident shows that the place of the accident was adjoining the last Bungalow on the western side one of the Bungalows of the Housing Board on the Race Course Road, Baroda. The Panchnama also shows that a scaffold was put by the side of the western wall of the Bungalow at a height of about 25 feet. In the panchnama it is also mentioned that there was a plaster in a part of the western wall and Vashram had fallen down from the scaffold on the ground at that place.

10. Bababhai Ashabhai Patel, the Deputy Engineer, Housing Board is examined as

a witness on behalf of the Gujarat Housing Board. He is examined at Ex. 65. He has deposed that the Gujarat Housing Board constructed the houses for the industrial workers. The premises constructed by the Board were given on rent to the Industrial workers. He deposed that the Gujarat Housing Board did not do any business but they constructed the houses on no profit no loss basis, the Board sold the houses on hire purchase scheme to lower income group. He deposed that Messrs Swadhin Builders-the Opponent No. 2-was given the contract for constructing the houses in question. The Opponent No. 3 was not the contractor for the construction of that house. In cross-examination he deposed that the Gujarat Housing Board invited tenders and the houses were constructed by the Contractors. Swadhin Builders tender was accepted. Mr. K.C. Kshatriya was in charge of the construction of the houses as the Deputy Engineer. He was serving as the Deputy Engineer of the Housing Board at Ahmedabad. From the evidence of this witness it is clear that the Opponent No. 2-Messrs Swadhin Builders were given a contract by the Gujarat Housing Board the Opponent No. 1 for the construction of the houses in question, that is the houses where the accident had taken place. It may be mentioned that Mr. K.C. Kshatriya who was in charge of the construction work as the Deputy Engineer at the relevant time is not examined as a witness.

11. One Nathabhai Marghabhai Patel, Ex. 67 is examined at Ex. 67 on behalf of the Opponents Nos. 2 and 3. In his examination in chief he deposed that the opponent No. 3 had not taken the contract of the building where Vashram Harji is alleged to have met with the accident. He denied that he had engaged Vashram" as a mason in November 1967. He denied that Vashram Harji was given Rs. 8/- per day. He deposed that the Opponent No. 2 had not engaged Vashram Harji as a mason. He deposed that one Achumal Asandas had a contract for supervising the bungalows of Group 1. He further deposed that Vashram was working in a bungalow in group No. 11. He did not know who was constructing the Bungalow in Group No. II. In cross-examination he admitted that he was giving evidence on behalf of the Opponent No. 3 only. He admitted that he had written the application Ex. 11 on behalf of the Opponent No. 2 and he had signed that application Ex. 11 for Swadhin Brothers. The application Ex. 11 shows that this witness had close relations with the Opponent No. 2. According to this witness he was not working for the opponent No. 2. He cannot have personal knowledge as to whether the Opponent No. 2 had engaged Vashram Harji as a mason. However, he has admitted that Vashram Harji was working in a bungalow in Group No. 2. The witness has deposed that he did not know who was constructing the Bungalow in Group No. 2. According to the witness, the contract for the construction work in Group No. 1 was given to Achumal Ashandas. However, from the Deputy Engineer of the Housing Board Ex. 65 it is clear that the contract of the construction of the house where accident took place was given to the Opponent No. 2.

12. It may be mentioned that nobody has entered into the witness box on behalf of the opponent No. 2 and the opponent No. 2 has not filed the written

Statement. Though the Opponent No. 2 has appeared through a pleader.

13. Ishwarlal Ramanlal Shah Ex. 41 is examined at Ex. 41. He has deposed that he was on duty on 24th November 1967 at the S.S.G. Hospital. He had examined Vashram Harjibhai on 24th November 1967 at 1-35 P.M. At that time he had the following injuries:

1. Two contused lacerated wounds 1" x 1/4" x scalp deep over occipito partial region, in midline.
2. Contused lacerated wound 1/2" x 1/2" scalp deep, just adjacent to above injury.
3. Multiple abrasions over forehead.
4. Abrasions over right hand and right elbow.
5. Abrasion? over left hand and forearm medially.
6. Fracture dislocation 05 over 06 quadraplegis: Paraplegia lower limbs paraparesis upper limbs.

He has deposed that the injuries were possible by fall. The patient expired on 25-11-1967. The cause of death was fracture dislocation 05 over 06 with quadraplegia with Bilateral branchoparmania. He personally examined the patient- In cross-examination he deposed that an inquiry a man from the Hospital had written that the income of the deceased was. Rs. 80/-. Now from the evidence of this witness it is clear that Vashram Harji sustained injuries as mentioned herein before on 24th November 1967 and he died as a result of these injuries on 25th November 1967. The evidence of the witness with regard to the statement mentioned in the case papers of the deceased that the deceased had the income of Rs. ?0/- is not proved as this witness had no personal knowledge with regard to that statement.

14. From the consideration of the aforesaid evidence it is proved the deceased Vashram Harji worked as a mason for a period of about 8 to 10 months before the date of the accident in the construction of the houses of the Gujarat Housing Board-the opponent No. 1. The contract for the construction of the said house was given by the Opponent No. 1 to the Opponent No. 2. Deceased Vashram was paid Rs. 8/- per day. Deceased Vashram in the course of his employment while plastering the outer wall of the house of the Gujarat Housing Board on Race Course Road, fell down from a "Palakh" at the height of about 25 ft. on the ground. He was paid Rs. 8/- per day. Therefore the deceased Vashram was a workman s defined in Section 2(n) read with item (viii) (a) of the Second Schedule of the Act. Deceased Vashram died as a result of injuries caused by an accident arising out of and in the course of his employment. Therefore, it is proved that he was a workman employed in the construction of the houses of the Gujarat Housing Board, the contract for the construction of which was given by the Gujarat Housing Board to the Opponent No. 2 and therefore he was a

workman employed by the Opponent No. 2. Therefore u/s 3 the Opponent No. 2 was liable to pay compensation in accordance with the provision of Chapter No. II of the Workmen's Compensation Act.

Section 12(1) reads as under:

Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the Contractor) for the construction by or under the contractor or the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with references to the wages of the workman under the employer by whom he is immediately employed.

x x x x

Section 12(3) reads as under:

Nothing in this section shall be construed as preventing a workman from recovering compensation from the Contractor instead of the principal.

From the provisions of Section 12(1), it is clear that the principal is made liable to pay the compensation. Under Sub-section (3) of this section an option is given to the workman for recovering the compensation from the contractor instead of the principal. Therefore, the Opponent No. 1-the Gujarat Housing Board is liable to pay the compensation as the principal and the Opponent No. 2 is liable to pay the compensation as the contractor-employer. Now u/s 4(1) (a) subject to the provisions of this Act the amount of compensation shall be as follows, namely:

(a) Where death results from the injury and the deceased workman has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV-the amount shown against such limits in the second column thereof.

15. Now we have held that Vashram was getting Rs. 8/- per day and therefore his monthly wages would be Rs. 240/-. According to the Schedule IV the compensation to be awarded would be Rs. 8000/- Therefore, the opponent Nos. 1 and 2 are liable to pay Rs. 8000/- as compensation in accordance with the provisions of Chapter II of the Workmen's Compensation Act.

The applicants have claimed Rs. 4000/- as penalty u/s 4A. Section 4-A reads as under:

(1) Compensation u/s 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to

the extent claimed he shall be bound to make provisional payment based on the extent of liability which he accepted and such payment shall be deposited with the Commissioner or made to the workman as the case may be without prejudice to the rights of the workman to make any further claim.

(3) Where any employee is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the option of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount shall be recovered from the employee by way of penalty.

It is not disputed that the notices were served on the Opponents Nos. 1 and 2 by the claimants. Vashram died on 25th November 1947 and immediately the opponents Nos. 1 and 2 became liable to pay the compensation and the compensation became due at that time and the Opponents Nos. 1 and 2 became liable to pay the compensation. However, the opponents Nos. 1 and 2 did not pay the compensation to the claimants. They also did not comply with the provisions of Sub-section (2) of Section 4A.

On behalf of the Appellants it was argued that the Opponent Nos. 1 and 2 were in default in paying the compensation under the Act within one month from the date it fell due and therefore the claimants were entitled to simple interest at 6 per cent per annum on the amount due and an amount of Rs. 4000/- as penalty as there was no justification for the delay.

The Opponents Nos. 1 and 2 have shown no justification for not making the payment immediately after it became due or within the period of one month after it fell due. Nothing is brought on record to show that there was any justification for not paying the amount of compensation within the stipulated time. On the contrary, in the first place the Opponents Nos. 1 and 2 denied their liability. They did not give any reply to the notice. The opponent No. 1 knew that the contract was given by it to the opponent No. 2. The work of the opponent No. 2 was supervised by the Deputy Engineer of the opponent No. 1. Therefore, clearly there were malafide on the part of the opponents Nos. 1 and 2 in not paying the compensation to the claimants. Under the circumstances we are of the opinion that the claimants are entitled to the amount of Rs. 4000/- being 50 per cent of the compensation awarded to the claimants.

In the result, we allow the appeal and set aside the award passed by the learned Civil Judge (Senior Division), Baroda, we direct that the opponents Nos. 1 and 2 shall pay Rs. 8000/- with interest at the rate of 6 per cent from the date of the application till the date of payment. We also direct that the Opponents Nos. 1 and 2 shall pay the amount of Rs. 4000/- to the claimants as penalty. The opponents Nos. 1 and 2 shall pay the costs of the claimants in both the courts and they shall bear their own costs. The opponent No. 3 shall bear its own costs

in both the Courts.