
(2008) 03 BOM CK 0022
In the Bombay High Court
Case No : First Appeal No. 149 of 2007

The Executive Engineer, Public Works Department, Division No. 1 APPELLANT

Vs

Raisabanoo and Others RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Workmens Compensation Act, 1923 — Section 12, 30

Citation : (2009) 1 BomCR 434 : (2008) 110 BOMLR 1061 : (2008) 118 FLR 433

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : D.M. Kale, Assistant Govt. Pleader, for the Appellant; J.T. Gilda, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Pangarkar, J.—This is an appeal u/s 30 of the Workmen's Compensation Act by the original non applicant No. 1.

2. The facts giving rise to this appeal are as follows: One Abdul Rahuf was working as a labourer with non applicant No. 3 the contractor. Non applicant No. 3 contractor had undertaken a contract for repairs to the premises owned by the non applicant No. 2. The contract was awarded by non applicant No. 1 to non applicant No. 3. Abdul Rahuf met with an accident while he was repairing the said shutter in the premises belonging to non applicant No. 2. He was getting salary of Rs.2400/-per month. The claimants who are the heirs of the deceased claim compensation of Rs. 2,07,980/-. Application was opposed by the non applicants 1 to 4. Non applicant No. 1 and 2 both denied that they have awarded any contract to non applicant No. 3 to carry out repairs to the shutters. They also denied that the deceased was permanent employee and that he was getting Rs. 2400/-P. M. as wages. It is the contention of the non applicant No. 2 that applicant No. 2 does not know as to under what authority he carried out the work in the building. In short all non applicants denied their liability to pay

compensation.

3. Commissioner under the Workmen's Compensation Act found that the deceased was working with the contractor. Non applicant No. 1 was a Principal and therefore he ordered non applicants 1 and 3 to pay compensation. Being aggrieved by this order the non applicant No. 1 has preferred this appeal.

4. I have heard the learned Counsel for the appellant-State and the respondents.

5. Non applicant No. 1 is a Public Works Department of Government of Maharashtra, No. 2 is the Principal of Industrial Training Institute run by the Government of Maharashtra and No. 3 is said to be the Contractor, while No. 4 is the Government of Maharashtra itself. No. 1 and 2 therefore are apparently the two separate Departments of Government. Obviously they represent the Government.

6. The undisputed facts are as follows: Non applicant No. 1 is the agency entrusted with the repairs and maintenance of all Government premises. Any repairs to any Government building or premises has to be essentially carried out by the non applicant No. 1. It is not disputed that the non applicant No. 1 for the purposes of said repairs issues or awards contract to a contractor. Non applicant No. 2 is the institution run by the Government. It had therefore written a letter to the non applicant No. 1 to repair the shutters of the building. The deceased while carrying out repairs to the said shutters suffered injuries and died. Non applicant No. 3 is the contractor who is said to have engaged the deceased.

7. With an undisputed fact that the deceased died while repairing the shutters, it is rather surprising that non applicant No. 1 as well as No. 2 deny that any contract was awarded and that therefore they are liable. None of the non applicants No. 1 and 2 explains how non applicant No. 3 had directed his employee the deceased to carry out the work. Entire funds for carrying out the work of repairs to Government building are put at the disposal of the Public Works Department and not at the disposal of any department. In the circumstances it is hard to believe that non applicant No. 2 would direct a contractor to carry out repairs to the shutter. It can therefore be none else than non applicant No. 1 who can issue direction to the contractor to carry out the repairs. This appears to be a fact in view of the admission of D. W. 1 Prakash Gandhi Sectional Engineer. He admits having received a letter from non applicant No. 2 to carry out the repairs to the shutters. He admits having opened a file in P. W. D. Office in respect of the repairs to the shutters. These facts are enough to draw inference that the work was entrusted to non applicant No. 3, else there was no reason for non applicant No. 3 to send his employee for repairs to the shutters. It may be observed here that when the witness admits having opened a file for repairs at the request of non applicant No. 2 to the shutters it should have placed that file on record that no such contract was awarded to non applicant No. 3. The best evidence was available in the form of that file. That file having been suppressed an adverse inference has to be drawn. Had the file been placed on

record the contents thereof would have gone against the non applicant No. 1. Learned Judge of the trial Court has relied on Ex. 34 to hold that job of repairs was allotted to non applicant No. 3 through non applicant No. 1. The above evidence and Ex. 34 shows that non applicant No. 1 had awarded contract for the repairs to the non applicant No. 3.

8. Counsel for the appellant contended that deceased was employee of respondent No. 3 and the non applicants 1, 2 and 4 have nothing to do with it. He submits that the contract itself is not proved and therefore the appellant does not become the principal. The submission has no force. The documents of contract are suppressed by the appellant. The evidence shows that deceased was working at the Government building at the instance of non applicant No. 1. D. W. 1 Prakash Gandhi admits that his department carries out repairs to government building through contractor. He also admits that the file was opened. It is clear from these admissions that the department and therefore Government is the Principal and non applicant No. 3 is the contractor. Provisions of Section 12 of the Workmen's Compensation Act say that the principal employer shall be liable to pay compensation when the workmen engaged by the contractor suffers an injury or dies during the course of the employment. Learned Judge of the Court below has rightly appreciated the evidence. There is enough evidence to show that the deceased was engaged as a labourer by contractor and contractor was carrying out the work at the instance of the appellant non applicant No. 1. In view of this I find no substance in the appeal. It is dismissed.