

(2014) 02 BOM CK 0157

Bombay High Court (Nagpur Bench)

Case No: First Appeal No. 606 of 2013

District Animal Husbandry
Officer, Zilla Parishad Office,
Yavatmal

APPELLANT

Vs

Smt. Chhaya and Others

RESPONDENT

Date of Decision: Feb. 12, 2014

Acts Referred:

- Workmens Compensation Act, 1923 - Section 2(1)(e)

Citation: (2015) 1 ACC 259 : (2014) ACJ 2791 : (2014) 3 ALLMR 743 : (2014) 1 AnWR 695 :
(2014) 6 BomCR 69 : (2014) 141 FLR 224 : (2014) 4 MhLJ 815

Hon'ble Judges: S.B. Shukre, J

Bench: Single Bench

Advocate: D.A. Sonwane, for the Appellant; Manoj Kariya, Ms. Rani Nitnaware, Advocate
for Respondents Nos. 1 to 4 and Shri M.A. Kadu, A.G.P., for the Respondent

Final Decision: Dismissed

Judgement

S.B. Shukre, J.

This appeal is filed against the judgment and order passed in Workmen's Compensation Application (F) No. 4 of 2006 on 11/3/2010 by the Commissioner for Workmen's Compensation, Labour Court, Buldhana. The appellant is original non-applicant No. 1, respondents No. 1 to 4 are the original applicants/claimants and respondent No. 5 is original non-applicant No. 2. The facts giving rise for filing of this appeal may be stated in brief as under.:

Respondent No. 1 is the widow of deceased Dilip while respondents No. 2 to 4 were the son and parents of deceased Dilip, respectively. Deceased Dilip, according to respondents No. 1 to 4, was the original employee of respondent No. 5 but at the time of his death, he was rendering his services to the appellant as a Driver. On 06/7/2005, he was driving one motor vehicle bearing registration No. MH-29/C-283

by which doctors and other officers of the appellant were travelling in discharge of their official duty. When the said vehicle reached near Pimpalshende Shiwar at about 7.30 p.m., it dashed against one roadside tree and in this accident, deceased Dilip sustained injuries and later on he succumbed to those injuries. As the accident occurred during the course of employment and it arose from the employment of the deceased with the appellant, respondents No. 1 to 4 filed claim for compensation with the Workmen's Commissioner against the appellant and respondent No. 5.

The application was opposed by the appellant. The main ground of opposition was that the deceased was not the employee of the appellant and that he was the employee of respondent No. 5 and, therefore, the appellant could not be fastened with any liability to pay compensation to the dependents of the deceased i.e. respondents No. 1 to 4. It was also submitted that the jeep was owned by respondent No. 5. However, learned Commissioner rejected all these contentions and by his judgment and order passed on 11/3/2010, directed the appellant to pay compensation of Rs. 3,51,080/- together with penalty of Rs. 1,75,540/- to respondents No. 1 to 4 together with interest from the date of the application.

Not satisfied with the said judgment and order, the appellant has preferred the present appeal.

I have heard Shri D.A. Sonwane, learned Counsel for the appellant, Shri Manoj Kariya with Ms. Rani Nitnaware, learned Counsel for respondents No. 1 to 4 and Shri M.A. Kadu, learned A.G.P. for respondent No. 5.

2. This appeal gives rise to a substantial question of law and therefore it stands admitted on the following substantial question of law.:

Whether the Workmen's Compensation Commissioner and Labour Court, Buldhana was in serious error in holding that deceased Dilip was in the employment of the appellant?

3. By consent, this appeal has been finally heard.

4. Learned Counsel for the appellant has strongly argued that there was no material available on record from which a finding could have been recorded by the learned Workmen's Commissioner that relationship of employer and employee subsisted between the appellant and Dilip at the time when the accident occurred. He submits that it has been established through the evidence of Appellant's Witness No. 1 Asha Ramesh Gedam that deceased Dilip was an employee of the department of Animal Husbandry, Government of Maharashtra and that the Government of Maharashtra had only temporarily transferred the unit of Animal Husbandry together with staff including driver, deceased Dilip, to the appellant and, therefore, the appellant could not have been held to be the employer of the deceased. He submits that as per the Government Resolution dated 22/11/2000, which he has produced on record during the course of argument and which has been marked "X" for the purposes of

identification, the service conditions of deceased Dilip were governed by the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (for short, "MCS Rules") and this would clinchingly establish that deceased Dilip could not have been termed as an employee of the appellant. He further submits that the appellant, as per the provisions of Rule 14 of the MCS Rules, did not have any authority to take disciplinary action against deceased Dilip, which fact would show that ultimate control over the conduct of deceased Dilip in the performance of his duty as a Government Servant was with the Government of Maharashtra and as such, by no stretch of imagination, the appellant could have been termed as an employer of deceased Dilip.

5. Learned Counsel for respondents No. 1 to 4 has invited my attention to the definition of the term "employer" as given in Section 2(1)(e) of the Workmen's Compensation Act, 1923 (for short, "WC Act") and submitted that since the services of deceased Dilip were temporarily transferred to the appellant and were being utilized for a temporary period by the appellant, the relationship of employer and employee or master and servant stood established between the appellant and deceased Dilip. He submits that for the purpose of eligibility for receiving compensation under the provisions of the W.C. Act, what is required to be seen is the subsistence of master and servant relationship in terms of the definition of the term, "employer" given in Section 2(1)(e) of the W.C. Act and it is not necessary to examine the question as to who was the competent authority to take disciplinary action against the employee. He further submits that even otherwise, there can be two competent authorities, one for exercising overall supervision and control for day to day performance of duty of an employee and the other for taking appropriate decisions for taking disciplinary action against that employee and in such a case, the former cannot escape from the liability for payment of compensation by saying that it had no disciplinary authority over the employee. He, therefore, submits that there is no merit in this appeal.

6. It is seen from the observations of the learned Workmen's Commissioner appearing in paragraph 25 of the impugned judgment and order that the appellant has established through the evidence of its witness No. 1 Asha that the deceased was originally an employee of the Government of Maharashtra and his services were temporarily lent to the appellant after Animal Husbandry scheme was transferred for its implementation temporarily together with the staff working for that scheme to the appellant. The compensation claimed in this case is under the provisions of the W.C. Act and, therefore, as rightly submitted by learned Counsel for respondents No. 1 to 4, what has to be seen is whether there was in existence relationship of master and servant between the appellant and deceased Dilip at the time of his death in accident, in accordance with the definition of the term "employer" given in Section 2(1)(e) of the W.C. Act and there is no need to look for any other provision showing who was the appointing or disciplinary authority of the deceased, that being irrelevant for deciding a claim under the W.C. Act.

7. Learned Counsel for the appellant has placed on record a copy of the order passed by the Animal Husbandry Commissioner, Government of Maharashtra, Pune on 17/12/2007 showing that the entire Animal Husbandry unit together with staff including deceased Dilip were transferred temporarily on deputation to the appellant w.e.f. 18/11/2000. This order is already forming part of the record of the Court below and it is at Exh. 54. This order supports the evidence of A.W.-1 Asha. Now, the question is; what could be the effect of temporary transfer of service of deceased Dilip to the appellant and whether by such temporary transfer, relationship of master and servant between appellant and the deceased was established? In order to address this issue, it would be necessary for us to look at the definition of term, "employer" as appearing in Section 2(1)(e) of the W.C. Act. For the sake of convenience, Section 2(1)(e) is reproduced as under.:

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him..

It is clear from the language of Section 2(1)(e) that a person is included in the term "employer" if services of the employee are temporarily lent to him by the person with whom the employee had originally entered into a contract of service.

8. In this case the employee, deceased Dilip, had entered into the contract of service with the Government of Maharashtra and the Government of Maharashtra had transferred his services temporarily to the appellant. It would mean that the Government of Maharashtra had lent his services to the appellant for a temporary period of time and, if this is so, the appellant would squarely fall within the definition of the term "employer" as given in Section 2(1)(e) of the W.C. Act. Therefore, I find no substance in the argument of learned Counsel for the appellant that deceased Dilip was not an employee of the appellant.

9. It is true that some of the service conditions of deceased Dilip were governed by the provisions of Rule 14 of the MCS Rules. But, such control of the Government of Maharashtra over deceased Dilip, as seen from the provisions of Rule 14, was only for a limited purpose, i.e. for taking decisions for the purpose of conducting disciplinary proceedings against him. The other control relating to day to day performance of duty by deceased Dilip, as per the Government Resolution dated 22/11/2000, paragraph-5, lay with the appellant. It is provided in this paragraph that all matters relating to administration and implementation of service conditions of the transferred employee shall be dealt with by the concerned Zilla Parishad, i.e. the appellant herein. It were only the disciplinary matters the control over which was kept with the Government of Maharashtra under this Government Resolution and this was in consonance with the provisions of Rule 14 of the MCS Rules.

10. Learned Counsel for the appellant has submitted that if the authority to initiate disciplinary proceedings against an employee on deputation to the appellant is kept with the Government of Maharashtra, it would mean that the Government of Maharashtra is the removing authority and, therefore, the employee is the employee of, not the appellant but of the Government of Maharashtra. With due respect, I disagree with learned Counsel for the appellant in this regard, and the reason is quite straight forward. Under the W.C. Act, criterion for creation of master and servant relationship in case of a person sent on deputation, is of lending or non-lending of his services and not who is the disciplinary authority. That apart, even when there are two authorities; one for exercising day to day supervision and control over the performance of duty by the employee and the other for exercising power and control with regard to the disciplinary proceedings to be taken against that employee in case of negligence or misconduct or dereliction of duty shown by the concerned employee, the concept of vicarious liability can be applied to only that authority which regulates and supervises on day to day basis the performance of duty by the employee. If, because of such distinction between two different authorities, it is held that the former would not be liable to pay any compensation and the liability to pay compensation would lie only with the latter, anomalous situation might arise, in which case, one authority exercising no day to day control over the performance of duty by an employee and having no say in granting or refusing permission to do an act complained to be tortious, would be made liable for payment of compensation for damage the tortious act might cause to others. To avoid such an anomalous situation, the Parliament in its wisdom has broad-based the definition of the term "employer" so as to include within that term even that person to whom services of an employee are temporarily lent by the original employer.

11. Learned A.G.P. for respondent No. 5 is also in agreement with this interpretation placed upon the term "employer" as well as the provisions made in paragraph-5 of the Government Resolution dated 22/11/2000.

12. In the circumstances, I find no merit in the submission that by virtue of applying some provisions of the MCS Rules to deceased Dilip, the deceased could be said to be out of the scope and ambit of the term "employer" as defined in Section 2(1)(e) of the W.C. Act.

13. Learned Counsel for the appellant has also sought to distinguish between the expression "contract of service" and "contract for service". He submits that in the instant case, deceased Dilip was engaged on contract for service by the appellant and there was no contract of service entered between the appellant and deceased Dilip. In support, he has placed his reliance upon the decision rendered by learned Single Judge of Punjab & Haryana High Court in the case of Ganesh Foundry Works Vs. Bhagwanti and Others.

14. In the said case of Ganesh Foundry Works facts were quite different. The deceased was permanently employed at "S" and after his duty was over at about 9.00 a.m. of 19/02/1977, he had come back to his residence and then he was summoned to the factory "G" to rectify a defect in the premises of that factory. Accordingly, the deceased had gone there and while doing the repairs job, he had received some injury resulting in amputation of his one leg to which later on he succumbed to death. In this case, the facts were not that deceased Dilip continued to render his service as driver for respondent No. 5. His service was transferred by respondent No. 5 to the appellant. It was also not the case that after his duty as driver for respondent No. 5 was over, the deceased was summoned by the appellant during his spare time to drive the jeep of the appellant for some official work. Therefore, by no means could it be said in the instant case that there was a contract for service between the appellant and deceased Dilip. By virtue of transfer of service of deceased Dilip to the appellant, a temporary contract of service had come into force between the appellant and deceased Dilip which created a relationship of master and servant. Therefore, the ratio of the said case of Ganesh Foundry Works (supra) would have no application to the facts of this instant case. For the above stated reasons, I find that learned Workmen's Commissioner and Labour Court, Buldhana has rightly held that deceased Dilip was in the employment of the appellant and that there was relationship of employer and employee subsisting between the appellant and deceased Dilip at the time of accident. The point is answered accordingly as in the negative. There is no merit in this appeal. It deserves to be dismissed.

The appeal stands dismissed with costs.