

Rauf Vs. Manager, Midas Care Pharmaceuticals Pvt. Ltd.

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Court : Mumbai Aurangabad

Decided On : Jul-10-2013

Judge : M.T. Joshi

Appeal No. : First Appeal No.979 of 2012

Appellant : Rauf

Respondent : Manager, Midas Care Pharmaceuticals Pvt. Ltd.

Judgement :

Oral Judgment:

Heard both sides.

2. Admit.

3. Substantial question of law that has arisen in the first appeal is - whether respondent can be termed as "principal employer" under the provisions of section 12 of the Workmen's Compensation Act, 1923.

4. Present appellant came with a case before learned Commissioner that he was regular employee with the present respondent in Electrical Department. On 13.05.2004, while carrying out electrical work of roof of godown, he fell down on the ground and suffered injuries as detailed in the petition. In the circumstances, he claimed compensation of Rs.3,00,000/-.

Present respondent came with a case that there was no employee-employer relationship between the parties. In-fact, appellant/ workman was employed by one M/s. B.S. Thakur, Aurangabad, who had undertaken contract of change of sheets of roof of present respondent. Said roof contractor had employed present appellant under hire and when under his supervision said work was continued, during that course of work the accident has occurred.

It was further pleaded that present appellant in willful disregard of the safety devices provided to him has carried the work and therefore the respondent is not liable to pay any compensation for the injuries caused to him in view of provisions of Section 3(b)(iii) of the Workmen's Compensation Act. Even otherwise, the respondent has paid an amount of Rs.1311/- towards medical expenses and further deposited an amount of Rs.37,188/- by the contractor. Though the amount is actually paid by present respondent/company, same is already withdrawn and hence present respondent wanted that the application be dismissed.

5. Record shows that present applicant has withdrawn the amount without prejudice to his further claim.

6. Learned Commissioner came to the conclusion that there is no employer-employee relationship between the parties and on this ground, the application came to be dismissed though certain reference regarding quantum of the compensation is cursorily made in the judgment.

7. Learned Counsel for the appellant relied upon Panditrao Shamrao Bhongade and Ors. Vs. Sunanda w/o. Nagesh Dongre and Ors., 2000 II CLR 394 and Mr. Abhigya Kushwaha Vs. Dayawati and Ors., (FAO 81/2010 - Delhi High Court) to buttress his argument that principal employer would be liable to pay compensation in view of provision of section 12 and more particular sub-section (1) of said Act. He further submits that if a contractor is employed to carry work, ordinarily part of trade or business of principal, then principal is liable for payment of compensation.

8. He further submits that though the appellant has failed before learned Commissioner to prove that the appellant was direct employee of present respondent, it was own admission of the respondent that the appellant suffered

injuries while carrying out work in his premises while repairing the roof through contractor. In the circumstances, he submits that even on own admission of the respondent, it would be clear that the appellant was working under the contractor in the regular course of business or trade of original principal. The terms "trade" and "business" have been explained in the authorities cited by him, which would go to show that even construction of the shopping complex for one time would be a regular course of the business of the employer. More particularly in the case of Bala Mallamma Vs. Registrar, Osmania University and Anr, 2001 II CLR 40, the contract awarded by the university for construction of building was held to be regular course of trade and business of the university though in ordinary parlance regular activity of the university is to impart education. Same is ratio of Mr. Abhigya and Ors. (Supra).

9. Learned Counsel for the respondent on the other hand submits that though the respondent was not its employee if has already deposited amount of exgratia compensation which was due and payable through the contractor. Same has been received by the appellant and hence he wanted that the appeal be dismissed.

10. On the basis of this material, my findings to the ground as detailed supra is that the present respondent would be liable to pay compensation to the appellant for the following reasons.

11. The authorities cited as detailed supra would show that the term workman employed for the execution of work under the contract which is ordinarily part of trade or business of the principal has received wider interpretation, more particularly term being used in the Workmen Compensation Act i.e. beneficial legislature. In the present case admittedly the appellant was carrying work of repair of godown of the respondent. It is respondent's own case that for that purpose he contracted out work to M/s. B.S. Thakur and during the course of that work the accident has occurred. In the circumstances, though the appellant has failed to prove his own case of being direct employee, the case of the respondent itself shows that the respondent would be liable to pay the compensation. Learned Commissioner, therefore, wrongly dismissed the application basing its reasoning solely on the pleading of the appellant. Therefore, interference in the reasoning

therefore is required.

12. As regards quantum of compensation, since learned Commissioner did not advert any attention to the evidence in this regard as application was dismissed on technical ground that there is no employee-employer relationship between the parties, to that extent the matter will have to be remanded back, so that finding on the facts would be there. Same is the case as regards case of present respondent that the appellant suffered injuries as he did not wear safety belts provided to the contractor as it is not adverted to by the learned Commissioner.

13. In the circumstances, following order is passed :-

(i) The appeal is partly allowed without any order as to costs.

(ii) The order of learned Commissioner dismissing the application is hereby set aside, instead learned Commissioner is directed to allow parties to lead evidence afresh on the quantum of compensation and liability to pay compensation, in view of provisions of section 3(b)(iii) of the Workmen's Compensation Act and thereafter decide said issue afresh and grant compensation if any found due and payable by deducting amount already received by the appellant.

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