

Nitin Vs. Ramesh and Others

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Court : Mumbai Nagpur

Decided On : Jun-30-2015

Judge : A.S. Chandurkar

Appeal No. : First Appeal No. 322 of 2014

Appellant : Nitin

Respondent : Ramesh and Others

Judgement :

Oral Judgment:

1. This appeal filed under Section 30 of the Workmen's Compensation Act, 1923 (for short the said Act) takes exception to the judgment dated 3-5-2013 passed by the learned Commissioner, Workmen's Compensation, Gondia. By said judgment, the claim for compensation moved by the respondent Nos.1 and 2 under Section 10 of the said Act has been partly allowed and the present appellant has been held liable to pay compensation to the respondent Nos.1 and 2.

2. The relevant facts are that:

The son of the respondent Nos.1 and 2 " Lalchand used to do various works under the directions of the respondent No.3 herein " Santosh. According to the respondent Nos.1 and 2, on 19-6-2011, the respondent No.3 had come to their residence to engage services of Lalchand. The respondent No.3 told Lalchand that

work of laying tin sheets in the Godown owned by the present appellant was to be done. Accordingly, while undertaking the work of laying tin sheets on 19-6-2011, Lalchand came in touch with a live electric wire on the ceiling of the Gas Godown owned by the appellant and received an electric shock. The same turned out to be fatal resulting in demise of said Lalchand. According to the respondent Nos.1 and 2, Lalchand was earning Rs.200 per day and was aged about 20 years. In aforesaid background, a notice came to be issued to the appellant as well as the respondent Nos.3 and 4 under Section 10 of the said Act on 31-12-2011 demanding compensation of an amount of Rs.10,00,000/-. On not receiving any amount of compensation, present proceedings under Section 10 of the said Act came to be filed on 7-4-2012.

3. The present appellant “ owner as well as the respondent No.3 “ contractor filed common reply dated 30-7-2012 denying the entire case as sought to be made out. Reply was also filed by the respondent No.4 in which it was stated that the appellant had undertaken construction work of the Godown without obtaining any due permission and a notice had also been issued by the concerned Junior Engineer to stop the work and to apply for shifting of the electric supply line.

4. The parties thereafter led evidence. On behalf of the claimants, the respondent No.1 “ Ramesh vide Exhibit 16 who was the father of Lalchand examined himself. Similarly, one Chhotelal Patle examined himself vide Exhibit-28. The appellant examined himself vide Exhibit-10, the respondent No.3 examined himself vide Exhibit-11 and an Asstt. Police Inspector who had investigated the incident was examined vide Exhibit-16. The learned Commissioner after considering the aforesaid evidence came to the conclusion that Lalchand was doing labour work under the contractorship of respondent No.3 and that while doing the work of fitting tin sheets on the appellant's Godown on the say of the respondent No.3, he received an electric shock resulting in his death. The learned Commissioner thereafter found that as said work was done without obtaining due permission, the appellant alone was liable to pay compensation. Hence, by the impugned judgment dated 3-5-2013, the respondent Nos.1 and 2 were held entitled for an amount of Rs.6,72,000/- and the present appellant was held liable to satisfy said claim. It is this adjudication that is being challenged in the present appeal.

5. Shri A. A. Naik, learned Counsel appearing for the appellant submitted that the learned Commissioner erred in holding the appellant liable to satisfy the claim for compensation. He submitted that there was no relationship of employer and employee between the appellant and the deceased. The deceased was not an employee under Section 2(n) of the said Act nor was the appellant his employer under Section 2(e) of the said Act. It was then submitted that there was no evidence on record to show that the deceased had been engaged on behalf of the appellant by the respondent No.3 for laying the tin sheets. The statements of various co-workers clearly indicated that the accident had been caused on account of the act of the deceased who had himself climbed the roof of the Godown and had come in contact with a live electric wire. It was also submitted that the death as caused was not during the course of employment and that the work for laying tin sheets could not be said to have any connection with the trade and business of the appellant. In support of these submissions, the learned Counsel placed reliance on the following decisions:

- (1) Eknath P. Kamble vs. Janqui Nilu Kamble and anr. 2009(5) Bom. C. R. 395.
- (2) Om Prakash Batish v. Ranjit @ Ranbir Kaur and Ors. AIR 2008 Supreme Court 2145.
- (3) Central Mine Planning and Design Institute Ltd. v. Ramu Pasi and Anr. AIR 2006 Supreme Court 678.
- (4) Mackinnon Mackenzie and Co. Private Ltd v. Ibrahim Mahmmad Issak, AIR 1970 Supreme Court 1906.
- (5) Malikarjuna G. Hiremath vs. Branch Manager, Oriental Insurance Company Limited and another (2009) 13 Supreme Court Cases 405.

Without prejudice it was submitted that the appellant alone could not have been held liable to satisfy the claim.

6. Per contra, Shri R. M. Pande, learned Counsel appearing for the respondent Nos.1 and 2 supported the impugned judgment. According to him, the claim for compensation had been duly proved and the deceased received an electric shock

while he was laying tin sheets on the ceiling of the Gas Godown owned by the appellant. He submitted that considering the evidence led by the parties, the learned Commissioner had rightly found that the deceased had been working in the premises owned by the appellant having been so engaged by the respondent No.3. It was then submitted that the tin shed was being constructed for the purpose of business of the appellant and hence, in terms of Section 12(1) of the said Act, the appellant had been rightly held liable. He referred to the substantial questions sought to be raised by the appellant in the memorandum of appeal to indicate that there was only a limited challenge to the impugned judgment. In support of his submission, the learned Counsel placed reliance on the following decisions:

(1) Conservator of Forests and Anr. v. Kusumtai Ganpatrao Dhote and ors. 2014(7) Bom. C. R. 338.

(2) Bala Mallamma v. Osmania University, 2001IILLJ Andhra Pradesh.

(3) K. Kamalaveni and Anr. Vs. Subbathal Spinning Mills (P) Limited and Ors. III (2004) ACC 651 (DB).

(4) Sarjerao Unkar Jadhav vs. Gurindr Singh and another 1990 Mh.L.J. 790.

7. There is no appearance on behalf of the respondent No.3 though he has been duly served with the notice for final disposal of the appellant. Similarly, none has appeared on behalf of the respondent No.4.

8. Having heard the respective Counsel, two substantial questions of law arise for consideration for the purposes of Section 30 of the said Act. Substantial question of law as formulated as question (b) in the memorandum of appeal is treated as substantial question of law No.1. The said substantial question of law reads thus:

(1) Admittedly when the appellant had engaged the respondent No.3 for executing the work of installation of Tin Sheets and deceased Lalchand was working at the site as an employee hired for wages by the respondent No.3 and the installation of Tin Sheets is not a part of business of the appellant, therefore, can it be said that the appellant was employer of deceased Lalchand consequently can the liability

for payment of compensation on account of his death be fastened upon the appellant?

(2) Whether the appellant alone is liable to satisfy the claim for compensation?

9. While considering aforesaid substantial questions of law, the relevant evidence on record would have to be first appreciated. The father of the deceased " Ramesh deposed in terms of the claim petition. In his cross examination, he admitted that the death of his son occurred at the Godown of Bharat Gas Agency. He denied the suggestion that he was deposing falsely that the respondent No.3 had come to his house to engage the services of the deceased for doing the work at the Godown. The other witness examined was Chhotelal who stated that he was also engaged by the respondent No.3 who was the Contractor and that he had been sent along with the deceased on 19-6-2011 by the respondent No.3 for fitting the Tin Sheets. In his cross examination, he stated that when the police made enquiries at the site, he was not present and his statement was not recorded. He denied the suggestion made on behalf of the appellant that the deceased himself was responsible for the accident.

10. The appellant who is the owner of the Gas Agency examined himself and stated that the deceased on his own had gone on the ceiling of the Godown due to which he came in touch with a live wire and received a shock. In his cross examination, he admitted that the construction work of his Godown was in progress and that the work of putting Tin Sheets had been given on contract to the respondent No.3. He also admitted that an application had been made to the Electricity Board for shifting the electric line before starting the work at the Godown but the necessary permission had not been granted. He also admitted that criminal proceedings had been lodged under provisions of Section 304A of the Indian Penal Code against him. The respondent No.3 " Santosh in his deposition took the stand that the deceased had been working at Karda Rice Mill on 19-6-2011. However, though the work of fitting Tin Sheets at the Godown was going on, said work was stopped as the Drill Machine had stopped functioning. This witness further stated that he had gone for repairing the Drill Machine and the deceased on his own had gone to the ceiling of the Godown and had received an electric

shock. In his cross examination, he admitted that he did not have any list of workers who were engaged by him. He denied the suggestion that the deceased had been told to fit tin sheets on the Godown. He admitted that on 19-6-2011, work at Karda Rice Mill as well as the Gas Godown was being done and the distance between both the sides was about half kilometer. The last witness examined was the Assistant Police Inspector who stated that after making enquiris, it was revealed that the contractor who had been engaged for work at Karda Rice Mill was the same contractor who was also engaged for the work at Bharat Gas Godown. He further stated that it was revealed that the work at the Gas Godown had been commenced without obtaining necessary permission from the concerned authorities. In his cross examination, he admitted that the work at Bharat Gas Godown and Karda Rice Mill was being done by the respondent No.3 as a Contractor and that the deceased was engaged by him as a labourer. He also admitted that it was revealed in his enquiry that on account of negligence of the appellant and the respondent No.3, the deceased had met with an accident.

11. From aforesaid evidence on record, it is clear that the work of fitting tin sheets was being done at Bharat Gas Godown for which the appellant had given a contract to the respondent No.3. Similarly, the respondent No.3 had engaged the services of the deceased as Contractor. So also, the work had been started at the Gas Godown by the appellant without obtaining necessary permission. It is on this basis that the learned Commissioner recorded a finding that the appellant as well as the respondent No.3 were responsible for the death of the deceased, but as the appellant had started the work in question without obtaining necessary permission, he alone was held responsible to satisfy the claim for compensation.

12. Considering substantial question of law No.1 as framed, according to the learned Counsel for the appellant, the installation of tin sheets was not the part of business of the appellant and hence, the appellant could not have been held liable to pay compensation. From the evidence on record, it can be seen that the appellant was doing the business of running a Gas Agency. The work of setting up the Godown and putting tin sheets thereon was with a view to undertake the business of Gas Agency. It was during said period that the accident in question occurred. In **Bala Mallamma** (supra) the Division Bench of Andhra Pradesh High

Court has held that the word business? as used in Section 12 of the said Act has to be understood in the context in which the Act has been enacted. It has been held that the same cannot be given a restricted meaning considering the object of the enactment. A similar view has been taken by the Division Bench of Madras High Court in **K. Kamalaveni** (supra) wherein it has been held that if an accident occurs in the course of or for the purpose of the employer's trade or business, then provisions of Section 12 of the said Act would be applicable. In said case, an accident had occurred while constructing a roof of a Godown and the Division Bench of the Madras High Court after considering various decisions came to the conclusion that the same having occurred while undertaking the work of construction for the business of the principal employer, the liability could be fastened on him. The facts of the present case in hand are somewhat identical to aforesaid facts. In **Central Mine Planning** (Supra), it was held that in absence of any material on record to show that the claimant was employed for the purposes of the employer's trade or business, the liability could not have been fastened on the employer. In the present case, there is sufficient material on record to come to the conclusion that the deceased had been engaged by the respondent No.3 for undertaking the work of laying tin sheets on the Godown of the appellant. Hence, the ratio of aforesaid decision cannot be made applicable to the facts of the present case. Similarly, in **Eknath Kamble** (supra), the accident had taken place when the work of digging a well for private use was being undertaken. It is in that context that learned Single Judge held that the owner of the premises could not be held liable and it was only the Contractor who had engaged the services of the workmen who was liable. The ratio of aforesaid decision cannot assist the case of the present appellant in the light of findings recorded herein above that the Godown was being constructed for the business of the appellant. Similarly, the decision in **Omprakash** (supra) also cannot apply in the present facts as the accident therein had occurred when a casual employee was appointed for carrying out repair works in a residential house. It was held that the working in a residential house did not satisfy the requirements of law.

13. In **Mackinnon** (supra), it was held that for the purpose of coming within the ambit of the said Act, the injury must have arisen out of and in the course of employment. In facts of said case, it had been found that there was material on

record to hold that the death in question had occurred on account of an accident that arose out of employment of the deceased. Similarly, in **Malikarjuna** (supra), it has been held that there is need for casual connection between the death of a workman and his employment. In the present case, there is ample material on record to indicate that there was more than a casual connection between the accident and the engagement of deceased for the purposes of laying Tin sheets on the ceiling of the Gas Godown. This conclusion has also been drawn by the learned Commissioner in the impugned judgment.

14. At this stage, reference can be made to the observations of the Supreme Court in **Mackinnon** (supra) in respect of nature as well as burden of proof. In para 6 thereof, it has been observed thus:

6. In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts as long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead L. C. in *Lancaster v. Blackwell Colliery Co. Ltd.*, 1918 WC and IR 345 observed:

If the facts which are proved give rise to conflicting inferences of equal degrees or probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends then the Arbitrator is

justified in drawing an inference in his favour.?

When the material on record is examined on the touch stone of aforesaid observations, it can be easily concluded that the death of Lalchand occurred when he had been engaged by the respondent No.3 for laying tin sheets on the ceiling of the Gas Godown of the appellant.

15. As regards substantial question of law No.2, the conclusion arrived at by the learned Commissioner in the impugned judgment of holding the appellant alone responsible for satisfying the claim for compensation cannot be sustained. The entire evidence on record clearly leads to the conclusion that the services of the deceased had been engaged by the respondent No.3 as the Contractor for doing the work at the Godown of the appellant. The respondent No.3 could not have been exonerated from the liability on the ground that the appellant had commenced the work at the Godown without obtaining necessary permission. It was only because the services of the deceased were engaged by the respondent No.3 that the deceased had come to the Gas Godown for doing the work in question. Hence, said conclusion by the learned Commissioner of exonerating the respondent No.3 from being jointly and severally liable cannot be sustained.

16. In view of aforesaid discussion, substantial question of law as framed at Sr. No.1 is answered by holding that the work of installing tin sheets was being done as part of business of the appellant for which he was liable. Substantial Question of Law No.2 is answered by holding that along with the appellant, the respondent N.3 was also liable to satisfy the claim for compensation.

Hence, the following order is passed:

ORDER

(1) The judgment dated 3-5-2013 passed in Workmen's Compensation Case No.1/2012 is partly modified and it is held that the appellant as well as the respondent No.3 are jointly and severally liable to satisfy the claim for compensation to be paid to the respondent Nos.1 and 2.

(2) Subject to aforesaid modification, rest of the order stands confirmed.

(3) The appeal is partly allowed in aforesaid terms with no order as to costs.

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