

Vimalbai Vs. Divisional Manager

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Court : Mumbai

Decided On : Nov-17-2003

Reported in : III(2004)ACC796; 2004(3)ALLMR465

Judge : S.T. Kharche, J.

Appellant : Vimalbai

Respondent : Divisional Manager

Judgement :

S.T. Kharche, J.

1. Heard. This appeal can be disposed of at the admission stage as the short question involved in the appeal is regarding existence of the employer and employee relationship between the parties.

2. This appeal is directed against the judgment dated 25.1.1999 passed by the learned joint Civil Judge, Junior Division, Gadchiroli in Workmen's Compensation Case No. 1/97 rejecting the claim of the appellants for grant of compensation on Account of death of Jairam Joga Veladi.

3. It is not in dispute that Jairam Joga Veladi died as a result of Accident, when he was engaged in loading of bamboos in truck No. MTG 9511. The appellants are the legal heir of Jairam Joga Veladi and their application seeking compensation

was rejected on the sole ground that there was no employer and employee relationship in existence.,

4. Mr. Anthoney, the learned Counsel for the appellants contended that though Jairam Joga Veladi was working as a casual labour on the truck, his legal heirs would be entitled to receive compensation and the employer and employee relationship was in existence on the date of the Accident. He contended that absence of appointment letter and register regarding payment of wages in a case under the Workmen's Compensation Act, 1923 would not be material. In support of his submission, he relied on the decision of the Division Bench of this Court in the case of Mammed v. Gopalan 1995 Lab. I.C. 2767, as well as on the decision of Supreme Court in the case of Maghar Singh v. Jaszvant Singh : (1998)9SCC134 .

5. The learned Counsel for the respondent contended that no relationship of employer and employee was in existence and the Trial Court was justified in rejecting the claim of the legal heirs of Jairam Joga Veladi for compensation under Section 10(1) of the Workmen's Compensation Act, 1923 (for short, the Act).

6. I have considered the contentions canvassed by the learned Counsel for the parties. In the case of Mammed v. Gopalan (supra), the Kerala High Court while dealing with the definition of 'workman' as is given in Section 2(1)(n) of the Act held that, even assuming that claimant's employment on that day was of a casual nature that by itself is not enough to push him out of the ambit of the definition of workman. If a person has to be ousted out of the contours of the definition, the casual nature of his engagement must coupled with the succeeding postulate in the definition that such employment should not be for the trade or business of the employer. The word 'and' used in the definition is for the conjunction of the two postulates together in one person. No interpretation to make the two postulates disjunctive is warranted in the context.

7. However, the Hon'ble Supreme Court also observed in the case of Maghar Singh v. Jaszvant Singh (supra) that, there was sufficient evidence in that case to establish that the appellant was in the employment of the respondent at the material time and he had suffered injuries in the course of that employment. Absence of appointment letter or entries in register regarding payment of salary in

such case of seasonal work was not material.

8. Having regard to the law laid down by the Supreme Court, it is obvious that the deceased Jairam Joga Veladi cannot be said to be not engaged by the respondent as an employee. The present case appears to be identical with the case in which the Supreme Court held that there was sufficient evidence to establish that the appellant was in the employment of the respondent at the material time and he had suffered injuries in the course of that employment.

9. The Trial Court observed in the judgment that absence of entries in the log book would show that Jairam Joga Veladi was employed as a casual labourer, and, therefore, he would be out of the purview of the definition of the workman under Section 2(1)(n) of the Act. This finding is clearly erroneous finding especially when Jairam Joga was engaged on that day for loading bamboos in the truck for and on behalf of the respondent and in the process of tying the bamboo bundle with rope, the rope was broken and Jairam fell down and he suffered paralytic attack and subsequently died in the hospital.

10. In such circumstances, it is clear that the employee and employer relationship was in existence on the date of the Accident between the parties, and, therefore, the Trial Court ought to have determined the amount of just and reasonable compensation to be awarded to the legal representatives of Jairam in view of the provisions of Workmen's Compensation Act. But, the Trial Court simply rejected the application filed by the legal heirs claiming compensation and refrained himself from determining the amount of compensation. In such a situation, it is apparent that this is a fit case to be remanded to the Trial Court for fresh decision, in Accordance with the law.

11. In the result, the appeal is allowed. Impugned judgment passed by the Trial Court is set aside and the matter is remanded for fresh decision in Accordance with the provisions of the Workmen's Compensation Act with further direction to decide the matter expeditiously, preferably within three months.

12. Rule is made absolute in the aforesaid terms with no order as to cost.

