IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

Dated this the 22nd day of February 2018

Before

THE HON'BLE MR. JUSTICE B.A. PATIL

Miscellaneous First Appeal No.5901/2007 (WC)

The Hon'ble Secretary v/s. Smt. Prefulla

JUDGMENT

The present appeal has been filed by the appellants/respondent Nos.1 and 2 assailing the judgment and order, dated 02.04.2007, passed by the Commissioner for Workmen's Compensation, Sub Division-II, Belgaum (hereinafter referred to as 'the Commissioner', for short), in WCA/SR/101/2007 (Old NO:WCA/SR/7/2004 & WCA/SR/118/2003).

2. For the sake of convenience, the parties are referred to in terms of their status before the Commissioner.

3. Brief facts of the case are that,

Respondent No.1-Club is a social organization running with the funds received in the form of membership fee. The said club used to provide facilities for recreation to its members on 'no loss – no profit' basis. The 2nd respondent was engaged in a hotel business at Belgaum. The 1st respondent entered into an agreement with the 2nd respondent on 01.08.2002 and thereby entrusted the work of catering

and bar services to the 2nd respondent. It is further contended that in terms of the agreement, the 2nd respondent was supposed to render the catering services to the members of the 1st respondent for a period of five years from 01.08.2002 to 31.07.2007. It was further agreed that the 2nd respondent has to make available guest rooms, party halls within the premises of the 1st respondent.

The 2nd respondent engaged the services of one Sri Krishna K. Shetty who was supposed to manage the entire catering services of the 2nd respondent at the premises of the 1st respondent. The said arrangement was an oral arrangement between him and the 2nd respondent. The said Krishna K. Shetty used to provide eatables, food and beverages and he also used to charge for the same. There was no arrangement topay salary to the said Krishna K. Shetty. The said Krishna K. Shetty engaged the services of some workmen and he was dealing with the said services. In that light, on 01.03.2003, said Krishna K. Shetty committed suicide within the premises of the 1st respondent. The wife and daughter of the said Krishna

K. Shetty filed a claim petition by contending that the deceased Krishna K. Shetty was under the employment of the 2nd respondent in the premises of the 1st respondent-Club. It is further contended thaton 28.02.2003, the 2nd respondent checked the accounts and took stock of the bar and catering services and found that there was a shortfall in theaccounts and a complaint was lodged before the police in this behalf. It is contended that the deceased was under stress and strain and due to the fear, hecommitted suicide in the store-room. It is further contended that the

deceased was aged about 45 years and he was drawing salary of Rs.5,000/- per month. On these grounds, the claimants sought for allowing the petition by granting the compensation.

Respondent No.1-club filed their objection denying the contents of the petition, further contended that there was no relationship between them and the deceased; the deceased was an employee of the 2nd respondent in view of the agreement that was entered into between the 1st and the 2nd respondent. The relationship of master and servant existed with opponent No.2 and the deceased. It is the 2nd respondent who is liable to pay the compensation. The deceased was not on duty when the accident took place. On these grounds, respondent No.1 prayed for dismissal of the said petition.

Respondent No.2 filed his objections by denying the contents of the petition, further contended that he engaged the services of Krishna K. Shetty as a sub-contractor and said Krishna K. Shetty used to manage the entire catering work in the premises of the 1st respondent on his own without any supervisory control of respondent No.2, as such, there was no master and servant relationship between the 2nd respondent and the deceased and he is not liable to pay any compensation. He further contended that the deceased was not working as an employee and as such, the deceased does not come within the definition of the 'Workman' under the Workmen's Compensation Act. In that light, the claimants are not entitled to any compensation. He further contended that the said accident, which had taken place was not an accident

which has taken place in the course of or out of employment or business. On these grounds, he prayed for dismissal of the said petition.

On the basis of the above pleadings, the Commissioner framed necessary issues. In order to prove their case, petitioner No.1 came to be examined as P.W.1 and got marked Exs.P.1 to P.7. On behalf of the respondents, R.Ws.1 and 2 were examined and got marked Exs.R2-1 to R2-8. After hearing the parties to the lis, the impugned judgment and order came to be passed by the Commissioner.

4. Assailing the said judgment and order, respondent Nos.1 and 2 are before this Court.

5. Before going to discuss the facts in issue, I feel it just and necessary to place on record that this Court by order dated 20.03.2014 directed the respondents to deposit a sum of Rs.1,02,278/- within two weeks. Thereafter, a memo was filed stating that against the said order a Special Leave Petition in S.L.P. (C) No.DR.13586/2014 was filed before the Supreme Court of India and as such, the matter was adjourned for some days. On 14.11.2017, learned counsel for respondent No.1 submitted that the said Special Leave Petition was disposed of on 27.10.2017 and, as such, the matter has been heard.

6. At this juncture, it is necessary to mention here that after transfer of the appeal papers from Principal Bench to Dharwad Bench, and after issuance of notice on 03.03.2010, and Sri M.V.Chavan and Smt. Mamata M.Biliangadi have filed vakalathnama, there was no representation on behalf of the appellant on the previous date of hearing except on 21.10.2013. This Court, by order dated 20.03.2014, while observing that the appellants were not interested in prosecuting the appeal and the appeal could be dismissed for non-prosecution, found that question of law was involved in the appeal and the appeal had already been admitted. Therefore, this Court appointed Sri Vijay Kumar B.Horatti, as an Amicus Curiae to assist the Court and directed the appellants herein to deposit a sum of Rs.10,000/- towards the fee of the learned Amicus Curiae.

7. I have heard learned counsel appearing for the parties.

8. Learned counsel for the respondents/appellants would submit that the order passed by the Commissioner is erroneous and contrary to the law. He further contended that the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act', for short) are not attracted because the suicide committed by the deceased

Krishna K. Shetty did not arise out of employment or in the course of employment, as such, the Commissioner has exceeded the jurisdiction in passing the impugned judgment and order. He further contended that in order to attract the provisions of Section 3 of the Act, three pre-requisite conditions have to be fulfilled, which are – i) he must be an employee, ii) he must have met with an accident and iii) such accident must be in the course of employment or arising out of the employment. He further contended that the 1st appellant was giving the catering service to the 2nd respondent, which is an admitted fact, and the 2nd respondent has given the entire work to the deceased and he was not having any control and has not paid any salary. He further contended that there is no proof to show that the deceased was an employee, under such circumstances, respondent No.1/appellant No.1 cannot be made liable to pay the compensation. He further contended that there is no proof produced by the claimants to show that the deceased Krishna K. Shetty committed suicide because of the stress and strain and there is no nexus between the death and the

employment, therefore, in the absence of any such material, the provisions of the Act are not attracted and the impugned order is not sustainable in law. He further contended that the Commissioner has not answered the substantial question as to whether the deceased was an employee of

respondent No.1 or respondent No.2 and whether there existed any relationship between them, and unless and until there exists the relationship of employer and employee between the appellant Nos.1 and 2 and the deceased, they cannot be made liable. He further contended that the Commissioner has not applied the test as to who was having the actual control over the deceased at the time of commission of suicide. In order to substantiate the said contention, he relied upon the decision in the case of Workmen of Nilgiri Coop. Marketing Society Ltd. vs. State of Tamil Nadu and Others reported in 2004 LLR 351. Without the control test and organization test, the conclusion arrived at by the Commissioner is not sustainable in law. By relying upon the decision in the case of Maharashtra State Road Transport Corporation vs. Meenaxi Dhareppa Koli reported in ILR 2006 KAR 2104, learned counsel contended that 'mental stress' is not included in the list of occupational disease under Schedule III to the Act and as such it cannot be accepted that the act of suicide was brought about by acute stress, which was the cause for the death. In that light, he further contended that the Commissioner has not kept in view this aspect of the matter and has erroneously passed the impugned order. On these grounds, he prayed for allowing the appeal by setting aside the impugned judgment and order passed by the Commissioner.

9. Learned Amicus Curiae argued by contending that there is no evidence to substantiate the fact that the accounts were asked either by respondent No.1 or respondent No.2. In the absence of any such material, it cannot be held that the said reason made the deceased to suffer from any stress or strain as a result of which he committed suicide. He further contended that as per Section 12 of the Act, the contracting party must establish that there exists a relationship between them as a principal and an employer in order to make them liable to give the compensation. He further contended that the judgment and order passed by the Commissioner is erroneous and not sustainable in law. On these grounds, he prayed for allowing the appeal by setting aside the impugned judgment and order.

10. Per contra, learned counsel appearing for the claimants/respondents vehemently argued by contending that there existed relationship of employer and employee and the deceased was working under the guidance and control of respondent No.1, who was having control over the business activities carried on by respondent No.2. He further contended that deceased was working under respondent No.2 and the same has been admitted. Under such circumstances, the respondents/appellants now cannot

contend that there is no relationship of employer and employee and not liable to pay any compensation. It is further contended by the learned counsel for the claimants/respondents that only when respondent No.2 asked the deceased Krishna K. Shetty to give the accounts of the catering services and the sale of beverages and filed a criminal complaint before the police, because of that reason the deceased was under stress and strain and committed suicide in the course of employment. If respondent No.2 had not asked the accounts, the question of deceased committing suicide would not have arisen. He further contended that the Commissioner, after considering all the aspects has rightly come to the conclusion that there existed the relationship of employer and employee and as such, the Commissioner allowed the petition and awarded the compensation. On these grounds, he prayed for dismissal of the appeal.

11. From the above contentions, the substantial questions of law which arise for consideration of this Court are,

i) *Whether the Commissioner was justified in invoking the provisions of the Workmen's Compensation Act, when the respondents had contended that there is no relationship of employer and employee between respondent Nos.1 and 2 on the one hand, and the deceased on the other hand?*

ii) *Whether the Commissioner is justified in awarding the compensation, when the respondents had taken up the contention that there was no accident arising out of and in the course of employment?*

12. The first and foremost contention taken up by the learned counsel for the respondents/appellants is that in order to attract the provisions of the Act, three pre-requisite conditions are to be fulfilled. For the purpose of clarity, the provision under Section 3 of the Act is extracted hereunder:

> 3. Employer's liability for compensation.— (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:
> Provided that the employer shall not be so liable, —
>
> (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;
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> (b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—
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> (i) the workman having been at the time thereof under the influence of drink or drugs, or
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> (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
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> (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman,

(2) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,—

(a) that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that a workman who having served under any employer in any

employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply in the case of a notification by the Central Government, within the territories to which this Act extends, or, in case of a notification

by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A)] and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

As could be seen from Section 3 of the Act, if any person suffers from any injuries arising out of and in the course of his employment, his employer shall be liable to pay the compensation in accordance with the provisions of the said chapter. The test, which has to be undertaken for the purpose of ascertaining the relationship, is a mixed question of law as well as the fact. There is no decision of even the

Hon'ble Apex Court which lays down any hard and fast rule, nor it is possible to lay down any such rules to say whether the services rendered comes within the purview of the term 'in the course of employment' or 'arising out of employment'. There can be no single test – be it control test or be it organisaton test – which can be held to be determinative factor for determining the jural relationship of employer and employee. There will be borderline cases wherein there may be employer and employee relationship and that relationship has to be held only on the basis of the facts. In order to determine the relationship of an employer and an employee, the first test will be the supervision and control test and the said test is the prima facie test for determining the relationship of employment. This proposition of law has been laid down by the Hon'ble Apex Court in the case of Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra and others reported in AIR 1957 SC 264. On going through the said decision, the same makes it crystal clear that the nature and extent of control required to establish such relationship would vary from business to business and cannot be given a precise definition. It is further observed that the nature of business is also a relevant factor and the actual nature of the work done by the employees coupled with other circumstances would have a role to play in order to come to a definite conclusion with regard to employer- employee

relationship. In V.P.Gopala Rao Vs. Public Prosecutor, Andhra Pradesh reported in AIR 1970 SC 66, the Hon'ble Apex Court, at paragraphs 8, 9, 10 and 14, has observed as under:

> *"8. In Chintaman Rao v. State of Madhya Pradesh, 1958 SCR 1340 at p. 1349=(AIR 1958 SC 388 at pp. 392-393) the court gave a restricted meaning to the words "directly or through an agency" in Section 2(1) and held that a worker was a person employed by the management and that there must be a contract of service and a relationship of master and servant between them. On the facts of that case the Court held that certain Sattedars were independent contractors and that they and the coolies engaged by them for rolling bidis were not "workers".*
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> *9. It is a question of fact in each case whether the relationship of master and servant exists between the management and the workmen. The relationship is characterized by contract of service between them. In Short v. J. W. Henderson Ltd., 1946 SC (HL) 24 at pp. 33-34 Lord Thankerton recapitulated four indicia of a contract of service. As stated in Halsbury's Laws of England, 3rd Ed. Vol. 25, p. 448, Art. 872:*
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> > *"The following have been stated to be the indicia of a contract of service, namely, (1) the master's power of selection of his servant; (2) the payment of wages or other remuneration; (3) the master's right to control the method of doing the work; and (4) the master's right of suspension or dismissal 1946 SC (HL) 24, at pp. 33, 34; Could v. Minister of National Insurance, [1951] 1. KB 731 at P. 734; [1951] All ER 368 at p.371; Pauley V. Kenaldo Ltd. [1953] 1 All. ER 226 (CA) at p. 228; but modem industrial conditions have so affected the freedom of the master that it may be necessary at some future time to restate the indicia; e.g., heads (1), (2) and (4) and probably also head (3), are affected by statutory provisions (Short v. J. W. Henderson Ltd., 1946 SC (HL) 24, supra at p. 34.*

10. In Dharangadhara Chemical Works v. State of Saurashtra, 1957 SCR 152 =(AIR 1957 SC 264) the Court held that the critical test of the relationship of master and servant is the master's right of superintendence and control of the method of doing the work. Applying this test workmen rolling bidis were found to be employees of independent contractors and not workers within Section 2(1), in State of Kerala v. Patel V. M.(supra) and Shankar Balaji Waje v. State of Maharashtra 1962-1 Lab LJ 119=(AIR 1962 SC 517) while they were found to be workers within Section 2(1) in Bridhichand Sharma v. First Civil Judge, Nagpur, 1961-2 Lab LJ 86 = (AIR 1961 SC 644) and workmen within the meaning of Section 2(s) of the Industrial Disputes Act in D. C. Dewan Mohindeen Saheb & Sons v. Secy. United Bidi Workers' Union, 1964-2 Lab LJ = (AIR 1966 SC 370).

14. The onus of proving that the workmen were employed by the management was on the prosecution. We think that the prosecution has discharged this onus. It is not disputed that more than 20 persons worked in the premises regularly every day. There is the positive evidence of PW1 that the work of stripping stalks from the tobacco leaves was done under the supervision of the management. There is no evidence to show that the other work in the premises was not done under the like supervision. The prosecution adduced prima facie evidence showing that the relationship of master and servant existed between the workmen and the management. The appellant, did not produce any rebutting evidence. In the cross-examination of PW1, it was suggested that the workmen were employed by independent contractors, but the suggestion is not borne out by the materials on

the record. We hold that the persons employed are workers as defined in Section. 2(1). The High Court rightly held that the company's premises at Eluru were a factory."

On going through the above decision, the relationship of an employer and employee is a question of fact in each case whether the relationship of master and servant exists between the management and the workmen and there is no abstract a priori test of the work control required for establishing the control of service.

13. Keeping in view the above proposition of law laid down by the Hon'ble Apex Court, now, let me consider the facts of the case on hand.

14. As could be seen from the records, it is the contention of the claimants that the deceased Krishna K. Shetty was doing the catering business under respondent No.2 by virtue of an oral agreement entered into between the parties. It is the case of the claimants that when respondent No.2 asked the accounts, the deceased was working under the 2nd respondent in the premises belonging to the 1st respondent; the 2nd respondent took stock of the bar and catering and found that there was a shortfall in the accounts, and filed a complaint in this behalf, due to which the deceased was under stress and strain and out of fear, he committed suicide in the store-room. There is no dispute with regard to the

deceased Krishna K. Shetty committing suicide in the premises of respondent No.1 on 01.03.2003. Firstly, the petitioners have to prove that there existed a relationship of employer and employee between the 1st and 2nd respondent on one hand and the deceased Krishna K.Shetty on the other hand. In this behalf, if the averments in the objections filed by the respondent No.1, to the main petition are perused, at para No.1, he has specifically stated that the deceased was an employee of opponent No.2 in view of the agreement that had been entered into between opponent Nos.1 and 2 and it is the opponent No.2, who is liable to pay compensation and even the relationship of master and servant exists in between opponent No.2 and the deceased and not with the opponent No.1. Admittedly, the premises belongs to the 1st respondent and by virtue of the agreement entered into between the 1st respondent and the 2nd respondent on 01.08.2002 the catering and bar services was entrusted to the 2nd respondent. It is not in dispute that the deceased Krishna K. Shetty was working with the 2ndrespondent. The only contention which has been taken up bythe 2nd respondent is that he had entered into an agreement with the deceased and a sub-contract was given to the deceased and that there was control with him for supply of food and beverages and he was arranging the same and no arrangement to pay salary to the deceased was made in between respondent No.2 and the deceased, but, accordingto respondent No.2, it is an oral agreement and in order to substantiate the said fact nothing has been produced by respondent No.2. If really, he was not paying the salary tothe deceased, as contended, then under such

circumstances, the 2nd respondent taking the accounts and the stock of the bar and catering does not arise at all. Only because the deceased was working under the 2nd respondent, he went and checked the accounts, took stock of the bar and catering and found a shortfall in the accounts. This itself clearly indicates the fact that there existed the relationship of an employer and employee between respondent No.2 andrespondent No.1 on one hand and the deceased on the other. Further, if we peruse the agreement dated 01.08.2002, which has been entered into between respondent No.1 and respondent No.2, it is specifically mentioned therein that the said premises belongs to the Belgaum Club and the Club has reserved the right to review all the rates at which goods and services were to be supplied by the caterer and he was having control over the business of respondent No.1 and the office bearers, members of the catering committee can have a supervisory powers over the said premises and they can also even employ the personnel for the purpose of cleaning and the cost of the same will be recovered from the caterer. Allthese clearly indicate that the 1st respondent was also having the control over the said catering services rendered by respondent No.2.

15. Be that as it may. Even as could be seen from the records, the present appeal has been preferred by respondent Nos.1 and 2 together challenging the impugned judgment and order passed by the Commissioner and that itself clearly indicates the fact that they are jointly doing that particular venture and there was full control and possession

of respondent Nos.1 and 2. In that light, when the 1st respondent, in his objection, has admitted the fact that the said deceased was an employee working under respondent No.1 by virtue of an agreement entered into between opponent No.1 and 2, then under such circumstances, there exists the relationship of master and servant and, as such, the claimants have proved the first pre-requisite condition as contemplated under the law.

16. It is the second contention of the petitioners that the said accident has not occurred in the course of employment. As could be seen from the records and the contention of the parties, it is not in dispute that Krishna K. Shetty died in the premises of the 1st respondent and it is not in dispute that he was looking after the catering services of the 1st respondent by supplying food and beverages as per the directions and requirements of the opponent No.1 and when the deceased committed suicide in the course of employment, then under such circumstances that the said death or accident is in the course of employment. The said aspect has also been proved by the claimants.

17. Be that as it may. Commissioner is the last authority on facts. Appeal lies against any order if any substantial question of law is involved in the appeal. Whether the deceased was working under appellant Nos.1

and 2 and what type of control they were having over him is purely a question of fact. When the Commissioner has given a finding to the effect that there existed relationship of employer and employee and the deceased died in the course of employment, on this question of fact the appeal is not maintainable in law. This proposition of law has been laid down by the Hon'ble Apex Court in the case of Golla Rajanna and Others Vs. Divisional Manager and Another reported in (2017)1 SCC 45. The relevant paragraphs 9 and 10 of the decision in the said case read as under:

> *"9. The Workmen's Compensation Commissioner, having regard to the evidence, had returned a finding on the nature of injury and the percentage of disability. It is purely a question of fact. There is no case for the insurance company that the finding is based on no evidence at all or that it is perverse. Under Section 4(1)(c)(ii) of the Act, the percentage of permanent disability needs to be assessed only by a qualified medical practitioner. There is no case for the respondents that the doctor who issued the disability certificate is not a qualified medical practitioner, as defined under the Act. Thus, the Workmen's Compensation Commissioner has passed the order based on the certificate of disability issued by the doctor and which has been duly proved before the Workmen's Compensation Commissioner.*
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> *10. Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. Parliament has thought it fit to restrict the scope of the appeal only to substantial*

questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act."

Keeping in view the ratio laid down as quoted supra, the said contention is not having force, the same is rejected.

18. The next contention taken by the learned counsel for respondent Nos.1 and 2/appellants is that the said accident is not included in the list of occupational diseases and it cannot be accepted that the act of suicide was due to the stress and strain which caused the death of Krishna K. Shetty. In order to substantiate the said fact, learned counsel for the respondent Nos.1 and 2/appellants have relied upon the decision of this Court in the case of Maharashtra State Road Transport Corporation (quoted supra). In the said case, the deceased-workman was not on actual duty at the time of his death and under those circumstances, this Court had come to the conclusion that the workman had not undergone any mental stress during the course of employment and, having found that it is not an occupational disease under the schedule to the Act, it held that it cannot be accepted that the act of suicide was

brought about by acute stress which caused the death of the deceased. As could be seen from the records, the Commissioner has given a finding and arrived at the conclusion that, when the said deceased Krishna K. Shetty was serving, the accounts were asked and a complaint was lodged by Ex.R.2. in this behalf and because of that reason he was under stress and strain and committed suicide. The said contention is a question of fact and that question has been substantially discussed and answered by the Commissioner and, under such circumstances, the Appellate Court cannot interfere with the said finding given by the Commissioner. This proposition of law has been laid down by the Hon'ble Apex Court in the case of Shakuntala Chandrakant Shreshti V. Prabhakar Maruti Garvali and another reported in 2007 ACJ 1 and also in the decisions quoted supra. No doubt, in order to make respondent Nos.1 and 2 liable to pay compensation, the claimants have to establish that the said accident occurred in the course of employment or arising out of employment and that the said employment caused the death of the deceased. But, as could be seen from the records, the said fact has been elaborately brought on record. In that light, the said contention is not having any force, the same is rejected.

19. Be that as it may. If we peruse the evidence of P.W.1, the wife of the deceased, she has categorically stated that, in the course of employment, her husband had committed suicide when the accounts were asked and a complaint was filed. Even as could be seen from the written arguments filed by respondent No.1 and the evidence of respondent No.2 it is clear that the bills and the vouchers, which have been produced, have been signed by the deceased as a Manager of respondent No.1. Respondent No.1 has contended, in his written statement, that Krishna K. Shetty is an employee of respondent No.2, and it is an understanding between respondent Nos.1 and 2. In that light, the contention taken up by appellants that the said deceased did not die in the course of employment is not acceptable in law. Even during the course of cross- examination of the claimants, it has been suggested that an amount of Rs.1,00,000/- was due to the Belgaum Club from 01.01.2003. Respondent No.2 came to be examined as R.W.2, who, in his evidence during the course of cross- examination, has admitted the fact that there was an agreement between the 1st respondent and himself to run the canteen and bar and he has further admitted the fact that after entering into the agreement, he has not gone to the said club and there was no document entered between the deceased and respondent No.2 for having entrusted the work by sub-contract to him. He has further admitted that Ex.R.2. to Ex.R.2-8 are the

receipt books of the catering done by the deceased and in the said receipt book it contains the signature of the deceased and he has signed the said receipts as a Manager and other receipts are pertaining to bar and canteen. All these records clearly indicate the fact that the deceased was an employee under respondent No.2. When admittedly, respondent No.1 has given the contract to respondent No.2 and the said receipt has been signed by the deceased as a Manager of respondent No.2, then under such circumstances, in the absence of any documentary evidence, taking up a contention that the said contract was sub-let to the deceased will not help the appellants in this behalf. He has further admitted that from 01.01.2003 to 31.12.2003 an amount of Rs.1,00,000/- was due to the 1st respondent and even during the course of cross-examination, when a suggestion was made that, as an allegation was made against Krishna K.Shetty for having misappropriated the funds, he was under stress, he has not stated that he denies the same or that he does not know. But, the facts of the case on hand disclose that when the 2nd respondent asked the accounts and found that there was misappropriation of the funds, immediately, the deceased committed suicide, and this would definitely goes to show that the said deceased Krishna K. Shetty died in the course of employment under respondent No.2 because of stress and strain. When the fact that the deceased committed suicide because of stress and strain has been established, then, under

such circumstances, there is a nexus between the death and the death having taken place in the course of employment. Though the learned counsel for the respondents/appellants have contended that there is no nexus between the death and the employment, the facts and circumstances of the case on hand clearly indicate that the death of the deceased Krishna K. Shetty is in the course of employment because of the stress and strain.

20. The Hon'ble Apex Court in the case of Mackinnon Mackenzie & Co. Pvt. Ltd vs Ibrahim Mahommed Issak reported in AIR 1970 SC 1906, has observed that, *"To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of employment" mean in the course of work which the workman is employed to do and which is incidental to it. The words "arising out of the employment" are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered.*

……. if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act."

21. Keeping in view the above said principle and considering the facts and circumstances of the case on hand, it is clear that the deceased was engaged in the duty of food and catering services for the club belonging to the 1st respondent as per the instructions of the 2nd respondent, and he committed suicide only when the 2nd respondent asked him the accounts pertaining to the catering and service of beverages. If the 2nd respondent had not asked the accounts in the course of employment, then under such circumstances, the workman would not have committed suicide. In that light, it may be held that the accident or suicide is in the course of employment and, as such, respondent Nos.1 and 2 are liable to pay compensation. Though the Commissioner has not made an elaborate discussion and has not specifically answered the said aspect, on careful perusal of the records and the facts and circumstances of the case indicate that the deceased would not have committed suicide if the said situation had not arisen. In that light, the substantial question which have raised are answered in the affirmative.

22. The appellants have utterly failed to prove their contention that the Commissioner was not justified in invoking the provisions of the Act though there was no relationship of employer and employee and that the

Commissioner was also not justified in awarding compensation when the accident is not in the course of the employment.

23. Appeal is dismissed.

This Court places on record the services rendered by the learned Amicus Curiae in ably assisting the Court in disposing of the case.

A sum of Rs.10,000/- (Rupees Ten Thousand only) shall be paid to the learned amicus Curiae, as honorarium on proper identification and acknowledgment.