

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1819 of 2019****Reserved on 20.01.2020****Pronounced on 23.01.2020**

- Manish Mishra S/o Shri Rajendra Mishra Aged About 38 Years R/o House Number 1, Road Number 1, Matri Garden Risali, Tahsil And District Durg, Chhattisgarh.

---- Appellant**Versus**

1. Tikaram Deshmukh S/o Pratap Singh Deshmukh Aged About 52 Years R/o Sirali Basti Bhilai, Police Station Nevai, District Durg, Chhattisgarh.
2. Kumari Sangeeta Deshmukh D/o Tikaram Deshmukh Aged About 20 Years R/o Sirali Basti Bhilai, Police Station Nevai, District Durg, Chhattisgarh.
3. Mahendra Kumar S/o Tikaram Deshmukh Aged About 18 Years R/o Sirali Basti Bhilai, Police Station Nevai, District Durg, Chhattisgarh.

---- Respondents

For Appellant: : Shri Shikhar Sharma, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**C.A.V. Order/Award**

1. Heard on admission.
2. This Miscellaneous appeal has been preferred by the Non-Applicant under section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as the 'Act of 1923') questioning the legality and validity of the order dated 30.08.2019 passed by the Commissioner for Employee's Compensation Act, Labour Court, Durg in Case No. 45/EC Act/2016/Fatal whereby the Commissioner for Employee's Compensation while fastening the liability upon the Non-Applicant has directed him to pay a total amount of compensation to the tune of Rs.4,78,842/- (Rupees Four Lakhs Seventy

Eight Thousand Eight Hundred And Fourty Two Only) within a period of 45 days else it shall carry interest at the rate of 12% per annum from the date of accident till its realisation.

3. Briefly stated the facts of the case are that on 14.04.2016, deceased Smt. Lagni Bai while working as a labourer under the employment of Non-Applicant -Manish Mishra, met with an accident when she was cleaning the floor of his house as tiles stacked by the side of the wall had fallen on her. Owing to which, she sustained grievous injuries and expired during the course of her treatment, giving rise to the institution of the claim by her legal representatives, who are her husband and children, under section 22 of the Act, 1923 claiming compensation to the tune of Rs. 5,52,510/- (Rupees Five Lakhs Fifty Two Thousand Five Hundred and Ten Only) by alleging *inter alia* that the deceased while working as a labourer under the employment of Non-Applicant for the last 3 years used to earn Rs.200/- (Rupees Two Hundred Only) per day.
4. The aforesaid claim has been contested by the Non-Applicant by saying that he engaged one Budharam Mistri as a contractor for the installation of tiles and construction of his own house and pleaded further that in absence of any privity of contract with the deceased, no liability as such could be fastened upon him.
5. In support, the claimants have examined as many as 3 witnesses, while Non-Applicant has examined himself in order to disprove the claim.
6. After considering the evidence led by the parties, it has been held by the Commissioner for Employee's Compensation that the deceased expired on account of the accident occurred on 14.04.2016 out of and in the course of her employment with the Non-Applicant and that by considering her

monthly income to the tune of Rs.5,200/- (Rupees Five Thousand and Two Hundred Only) applied the relevant factor of 184.17 as the age of the deceased at the time of the accident was 40. In consequence, the award impugned has been passed while awarding the aforesaid amount of compensation.

7. Being aggrieved, the Non-Applicant has preferred this appeal, Shri Sharma, learned counsel appearing for the Appellant submits that the award impugned as passed by the Court below without impleading the contractor 'Budharam Mistri' is apparently contrary to law. It is contended further that since the deceased was not the employee of the Appellant and in absence of proof of privity of contract, no liability as such could have been fastened upon him. In support, he placed his reliance upon the decision rendered in the matter of *Om Parkash Batish vs. Ranjit alias Ranbir Kaur and others*, reported in (2008) 12 SCC 212.
8. I have heard, learned counsel for the Appellant and perused the entire record carefully.
9. From perusal of the statement of deceased's husband 'Tikaram Deshmukh' (AW-1), vis-a-vis, the Inquiry Report marked as Ex. P-4, it appears that the deceased, Smt. Lagni Bai, expired owing to the accident occurred on 14.04.2016 when she was cleaning the floor of the Non-Applicant's house as tiles stacked by the side of the wall had fallen on her at that particular time, which led to her sad demise. It reveals further from a bare perusal of the statement of deceased's husband that his wife used to work as a labourer of the Non-Applicant for the last 3 years in his building Maitrikunj, Rishali, Bhilai and used to earn Rs. 200/- per day and some tiles' work was going on in his house at the relevant time and his statement could not be

rebutted in his cross examination. The evidence would thus, show that the deceased was an employee of the Non-Applicant and expired while working as a labourer of him owing to the alleged accident occurred out of and during the course of her employment with the said Non-Applicant.

10. It appears further that while countering the contention of the Claimants, a defence plea was taken by the Non-Applicant that the deceased was not his employee as he engaged one 'Budharam Mistri' as his contractor and is not aware about the deceased. The Non-Applicant is, thus, trying to establish the fact that the deceased was not his employee and was infact engaged by his said contractor. The burden to establish the said fact was upon the Non-Applicant, however, he failed to establish the said fact by way of cogent and reliable evidence, much less by producing the deed of agreement that he (Budharam) was engaged by him as his contractor and deceased was his (Budharam) employee. In so far as the principles laid down in the matter of *Om Parkash Batish vs. Ranjit alias Ranbir Kaur and others* (supra) are concerned, as relied upon by Shri Sharma, it however appears to be distinguishable from the facts involved in the present matter. In the said matter, the deceased was employed as a workman for the construction of the residential building of the employer for a limited period and while interpreting the definition of "Workman" as provided prior to its amendment by the Act 46 of 2000, it was observed that the deceased had not fallen within the ambit of "Workman". However, that was not the question involved herein as no defence as such was taken by the Appellant. What has been pleaded by the Appellant in his written statement, as observed herein above, was that one Budharam Mistri was engaged by him and in absence of privity of contract, the

deceased cannot be held to be his employee. The Appellant has, however, failed to establish the said fact. In such circumstances, no reliance could be placed upon the said decision.

11. Consequently, I do not find any question of law much less the substantial question of law which arises for determination in this appeal. The appeal being devoid of merit is accordingly dismissed at admission stage itself.
12. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

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