

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CAF NO.421/2023 IN FA ST.NO.21655/2022

Sau.Mirabai Santosh Banherkar

..VS..

Smt.Shalini Jitendra Kokate and ors

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri S.A.Mohta, Counsel for the Applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 22/02/2023

1. By this application, the applicant who is original respondent No.1 preferred the appeal against judgment and award dated 20.7.2022 passed by learned Commissioner, under the Employees' Compensation and Judge, Labour Court at Buldhana in Application (ECA) (B) No.2/2018 whereby the applicant and non-applicant No.6 are held liable to pay compensation jointly and severally.

2. Learned counsel Shri S.A.Mohta for the applicant submits that deceased was working with original respondent No.2, non-applicant No.6 herein. In the evidence also, it is testified that the deceased was working with original respondent No.2, non-applicant No.6 herein who is contractor. He submits that perusal of the judgment and award shows that by framing issues burden was casted upon the applicant as well as original respondent No.2, non-applicant No.6 herein and it is held that

deceased was working with original respondent No.2, non-applicant No.6 herein. However, the present applicant was held liable jointly and severally to pay compensation and, therefore, the said judgment and award is challenged.

3. In view of provision of Section 30 of the Employees' Compensation Act, 1923, no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

4. As per submission in the present appeal, the applicant is neither employer nor she is liable to pay compensation as there was no employer and employee relationship between the deceased and the applicant. Erroneously the applicant has been held liable to pay compensation jointly and severally with original respondent No.2, non-applicant No.6 herein and, therefor, she be exempted from producing the said certificate to the effect that she has deposited the statutory amount payable.

5. Considering submissions of learned counsel, on applicant's depositing amount Rs.50,000/- within a period of one month from today under protest, exemption is granted to the applicant. On failure to deposit the amount, liberty

regarding exemption will be vacated without further reference to the Court. The application for condonation of be registered.

6. The application is **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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