

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3324 OF 2019

Manohar Gulab Kachave

...Petitioner

Versus

Smt. Naijabai Sakharam Thakare & Ors.

...Respondents

.....

Mr. R.C.Misal, Advocate holding for Ms. N.R.Suryawanshi,
Advocate for the Petitioner.

.....

CORAM : **RAVINDRA V. GHUGE, J.**

DATE : **01-07-2019.**

PER COURT :

01. The petitioner, who is opponent No. 1 in his capacity as a building contractor in Workmen's Compensation Claim No. 20/2016 is aggrieved by the Order dated 19.1.2019 below Exh. 44 delivered by the Commissioner under the Employees' Compensation Act No. 20/2016. By the said Order, the request of the petitioner for framing an additional issue has been rejected.

02. It is contended that though the petitioner was a contractor, who was carrying out the construction activity under the guidance of the architect i.e. Vastushri Architect, Dhule, the Trial Court has not framed an issue

as to whether the application is barred for non-joinder of necessary parties. He, therefore, prays that the said issue needs to be framed.

03. The Trial Court has rejected Exh. 44 for the reason that such an additional issue is not necessary as the Court has already framed an issue as to whether the application is maintainable in law. It is further recorded that the said application has been filed when the recording of oral evidence was concluded and the parties had to advance oral final submissions.

04. I find from the record available that the claimants have sought compensation from the petitioner being a building contractor and respondent No. 3-original opponent No. 2, for whom the building was being constructed. The son of the claimants died on the work site while the centering work was in progress. As such, in any eventuality the Workmen's Compensation Commissioner has to consider as to whether the accident arose 'out of and in the course of employment' leading to the death of the son of the claimants. It will then assess the workmen's compensation and decide the liability for payment of such compensation. In the event, the present petitioner, a contractor, is indemnified by any principal

employer, if so established, the petitioner can seek reimbursement of the compensation under the Act from the person who had indemnified the petitioner or is the principal employer, by following the due process of Law.

05. So also, if the claim suffers from non-joinder of parties, the claimants would suffer the consequences. The learned Labour Court has observed in the Order that it would decide the issue as to whether the claim is maintainable or not in the light of the pleadings of the parties.

06. Considering the above, this petition being devoid of the merit is, therefore, dismissed.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-