

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

WRIT PETITION NO. 6240 OF 2016

(M/s. Shrivastav Constructions..vs.. The Commissioner, Employees Compensation
Chandrapur & Ors.)

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

Court's or Judge's orders.

Shri V.S. Mishra with K. Deogade, Advocate for petitioner.
Shri A.M.Balpande, AGP for respondent No.1.
Shri M.P. Khajanchi, Advocate for respondent No.2.
Shri M.R. Pillai, Advcoate for respondent No. 7.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 3rd JANUARY, 2020.

1. The petitioner – original respondent No.1 in Workman's Compensation Claim Application No. 15 of 2011, is aggrieved by the order dated 29.8.2016 passed by the Employees Compensation Court in Miscellaneous W.C. Application No. 7 of 2015. The petitioner was directed to deposit 50% of the amount of the compensation granted by the Compensation Court vide judgment dated 19.02.2012, considering that the Special Darkhast No. 297/2015 was pending with the file of the Tahsildar, Korpana. The learned Commissioner has stayed the said proceedings subject to the said deposit.

2. It is informed that the petitioner has now deposited the said amount before the Compensation Court which is the Labour Court at Chandrapur.

3. The learned Advocate appearing on behalf of the original claimants submits that the compensation claim was filed on account of the demise of the sole bread earner Harisingh Rathod. Three daughters were minor and a male child was about three weeks old when the claim for compensation was filed before the Labour Court at Chandrapur. It is therefore, submitted that as these original claimants are living in abject poverty, they may be allowed to withdraw the amount deposited by the petitioner before the Labour Court.

4. The learned Advocate for the petitioner has strenuously opposed the request for withdrawal on the ground that considering the humble economic background of the claimants, the money cannot be recovered if eventually the petitioner succeeds before the Labour Court.

5. I find from the record that the Labour Court has delivered the judgment on 19.10.2012 by which the claimant's application was allowed. The petitioner as well as respondent No. 7 herein, who was the contesting respondents before the Labour Court, had appeared through an Advocate before the Court. A written reply opposing the claim was also filed. Miscellaneous Application No. 7 of 2015 was filed by the petitioner under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure praying for setting aside the alleged *ex parte* judgment.

6. The Employees Compensation Act permits a challenge to a judgment of the Labour Court, by preferring a First Appeal before the High Court, only if a substantial question of law is involved. The language used in Section 30 is very clear. This aspect will have to be considered by the Labour Court while dealing with Miscellaneous Application No. 7 of 2015 as to whether the said application can be said to be maintainable in view of the Employees Compensation Act being a special enactment which is a part of beneficial legislation and which does not prescribe any remedy for challenging the judgment of the Labour Court, save and except by filing a First Appeal.

7. Considering the above, this petition is disposed off as 50% amount has already been deposited by the petitioner before the Labour Court.

8. The widow of the deceased, original claimant No. 1, is permitted to withdraw an amount of Rs. 2 lacs from the Labour Court and the rest of the amount of Rs. 1,13,939/- which is deposited by the petitioner, shall be invested in a fixed deposit receipt in a nationalized bank. The claimant No. 1 widow shall tender an affidavit undertaking before the Labour Court that if, eventually, she suffers an adverse order and is not held to be entitled for the amount of compensation, she would deposit the said amount before the Labour Court within a period of twelve weeks from the date of such adverse order.

9. Considering the right of the claimants and the pendency of Miscellaneous W.C.Application No. 7/2015 for the last more than four years, all the litigating parties shall appear before the Labour Court on 3.2.2020 and the Labour Court shall endeavour to decide Miscellaneous W.C. Application No. 7 of 2015, as expeditiously as possible and in any case on or before 30.6.2020. Needless to state, the Labour Court shall also decide whether the said application is maintainable in the light of the provisions of the Employees Compensation Act, 1923.

(RAVINDRA V. GHUGE, J.)