

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9138 OF 2022

WESTERN PRECICAST PVT. LTD. ... PETITIONER
VS.
SMT. SHARIFA HAMID ALIAS
HAMIDKHAN JAMADAR AND ANR. ... RESPONDENTS.

...

Mr. Milan S. Topkar i/b. Mr. Saurabh Mandlik for Petitioner.

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CORAM: SANDEEP V. MARNE, J.
DATE : 03 OCTOBER 2023.

P. C.:

By this petition Petitioner challenges order dated 30 December 2021 passed by the Commissioner for the Employees' Compensation and Judge, Labour Court, Sangli allowing application filed by Respondents at Exh.23 for reopening of oral evidence.

2. I have heard Mr. Topkar. the learned counsel appearing for Petitioner. He would submit that at the instance of Respondents, witness summons was issued to the concerned doctor and he has presented himself on 01 July 1998 but Respondents did not conducted examination of this witness on 01 July 1998. Later cautious decision was taken to close the evidence and accordingly evidence closer pursis was filed by the Respondents on 09 September 1998. That thereafter complaint remained

pending for adducing evidence on the part of Petitioner. After the Petitioner filed pursis for closer of his evidence on 08 February 2021, complaint was adjourned for argument. He would submit that advocate for the parties accordingly argued the complaint on 22 February 2021 and the same was adjourned only for the purpose of production of case laws. At such a belated stage, Respondents presented application dated 21 March 2021 seeking to reopen their evidence for the purpose of examining doctor who allegedly treated deceased workman. Mr. Topkar would submit that Respondents could not have permitted to file an application for reopening of their evidence at this stage where the complaint was to be finally disposed of upon production of case laws by both the parties. He would submit that the Court has committed an error in permitting Respondents to reopen their evidence after arguments from both the sides were heard. He would submit that during the course of arguments of the Petitioner an objection of non-examination of the doctor was raised. In view to nullify the said objection, application for examination of the doctor was belatedly filed at the time when the complaint was to be finally decided.

3. In the present case proceedings are filed by the family members of the deceased workman claiming compensation in respect of accident that took place on 19 February 2015 in which the husband of Respondent No.1 was injured on account of fall of a crane with heavy iron box on his leg. It is case of Respondents that the workman has died on 22 November 2016 on account of injuries suffered by him during the

course of said accident. To prove this contention it appears that respondents have demonstrated for aducing evidence of doctor who was present in the court on 01 July 2019. However on that day since the advocate of Respondents was not present in the court, doctor could not have been examined though he was present personally in the court. Thereafter for reasons unknown, the advocate for the Respondents proceed to file evidence closure pursis on 09 September 2019 without examining the said doctor as witness.

4. It is in these circumstances that the Respondents desires reopening of evidence for the purpose of examination of the doctor. Considering the fact that the proceedings are filed for claiming compensation under the beneficial legislation, technicalities cannot be permitted to defend the parties from producing the vital evidence which would be necessary and which would assist the court in deciding the proceeding. Though Mr. Topkar made technical grouse in contending Court could not have to be allowed the application filed for the purpose of involvement of the objection during the course of argument, in the peculiar facts and circumstances of the case I am of the view that ends of justice would meet if the Respondents are permitted to examine the concerned doctor. In fact since there is a long gap between the date of accident and death of Respondent, in my view, it is appropriate that some medical evidence is to be brought on record for that the examination in connection with the accident and death of the employee. For that purpose examination of the doctor would in fact assist the Court in

arriving at a correct conclusion. I am therefore of the view that no error traced in the order dated 30 December 2021 passed by the Commissioner for Employees' Compensation and Judge Labour Court. Petition, being divided of merit, is dismissed without any order as to costs. Needless to say that after the respondents adduced their evidence and filed evidence closure purses, it would be open for the Petitioner to adduce additional evidence if considered necessary.

SANDEEP V. MARNE, J.

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