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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 01st February, 2017

+ W.P.(C) 7915/2015 and C.M. Appl. Nos.16000-01/2015

YOGESH SHARMA & ANR

..... Petitioners

Through: Ms. Jyoti Singh, Senior
Advocate with Ms. Archana
Gaur, Advocates

versus

DY LABOUR COMMISSIONER

(DIST. EAST AND NORTH WEST) & ANR Respondents

Through: Mr. Sanjoy Ghose, Addl.
Standing Counsel for
respondent No.1
Mr. Mahesh Ranjan, Advocate
for respondent No.2

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioners have challenged the *ex parte* order dated 14th May, 2015 whereby the Commissioner, Employees Compensation has awarded compensation of Rs.8,51,299/- to respondent No.2.
2. Respondent No.2 filed an application for compensation before the Commissioner, Employee's Compensation on the allegation that she was working as permanent employee with the petitioner in the packing department on a monthly salary of Rs.7,500/- since 24th July, 2008; on 24th May, 2013 at 07:00 p.m. she was in the lift along with six other employees when the chain of the lift broke down and resulted in the fracture of right leg; respondent No.2 remained admitted in

Usha Memorial Orthopedic Centre upto 27th May, 2013 and the respondent No.2 suffered 90% disability due to the aforesaid injuries.

3. Vide order dated 16th December, 2016, S.H.O., P.S. Gandhi Nagar was directed to submit a fresh status report in a sealed cover. S.I. Nishant from P.S. Gandhi Nagar is present in Court and has handed over the status report in sealed cover. The sealed cover has been opened by the Court Master and the status report is taken on record. The status report does not support the averments made by respondent No.2.

4. Learned senior counsel for the petitioners submits that the matter be remanded back to the Commissioner, Employee's Compensation and the petitioner be permitted to contest the application for compensation on merits. It is further submitted that the petitioners have deposited the principal award amount with the Commissioner, Employee's Compensation and the same be retained in FDR till the fresh adjudication of the matter on merits.

5. Mr. Sanjoy Ghose, learned amicus curiae appointed by this Court submits that since there has not been any contest on merits, it would be appropriate to remand the matter back to the Commissioner, Employee's Compensation to enable the Commissioner, Employee's Compensation to permit both the parties to lead the evidence and the application be decided on merits.

6. The appeal is allowed; the impugned order dated 14th May, 2015 is set aside and the matter is remanded back to Commissioner, Employee's Compensation for fresh adjudication. The parties shall appear before the Commissioner, Employee's Compensation on 02nd March, 2017 when the appellants shall file their written statement. The Commissioner, Employee's Compensation shall thereafter fix the

case for filing of replication and framing of issues. The Commissioner, Employee's Compensation shall afford a reasonable opportunity to both the parties to lead evidence and thereafter, pass a fresh order after hearing both the parties.

7. Considering the 90% permanent disability allegedly suffered by respondent No.2, the Commissioner, Employee's Compensation shall expedite the hearing of the compensation application.

8. The Commissioner, Employee's Compensation shall release a sum of Rs.25,000/- to respondent No.2 towards litigation expenses out of the amount deposited by the petitioners. The balance amount deposited by the petitioners be retained with the Commissioner, Employee's Compensation in fixed deposit till the fresh decision of the matter by the Commissioner, Employee's Compensation. The Commissioner, Employee's Compensation shall thereafter disburse the amount in terms of the fresh award.

9. It is clarified that nothing recorded herein shall be construed as an expression of opinion.

10. This Court appreciates the assistance rendered by learned amicus curiae in this matter.

11. Pending applications are disposed of.

12. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

FEBRUARY 01, 2017
rsk

J.R. MIDHA, J.