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

+ W.P.(C) 10774/2015 & CM No.27697-27698/2015

RAJ SHARMA

..... Petitioner

Through: Dr. Sumant Bharadwaj and Mr.  
Rakesh Kailash Sharma, Advocates

versus

GOVERNMENT OF NCT OF DELHI AND ANR ..... Respondents

Through: Mr. Anand Singh, Mr. Rajesh Naryan  
and Mr. Prashant Kaushik, Advocates  
for respondent No.2 with respondent  
No.2 in person  
Mr. Sanjay Gupta and Mr. Rajiv  
Malik, Advocates for respondent  
No.3.

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**ORDER**

% **20.02.2018**

1. The petitioner has challenged the order dated 21<sup>st</sup> May, 2015 whereby the Commissioner, Employees' Compensation has awarded compensation of Rs.8,18,899/- to respondent No.2.
2. Respondent No.2 filed an application for compensation before the Commissioner, Employees' Compensation claiming to be working as a mechanic for repairing air conditioners with the petitioner; on 21<sup>st</sup> May, 2011, there was an explosion in the air conditioner being repaired by respondent No.2 which resulted in grievous injuries to respondent No.2 and other employees of the petitioner; respondent No.2 was admitted in GTB Hospital by a PCR van; and respondent No.2 lost his left hand.
3. The Commissioner, Employees' Compensation held that respondent No.2 was employed with the petitioner and suffered 90% disability due to the accident in question. The Commissioner further held that the accident

suffered by respondent No.2 arose out of and during the course of his employment with the petitioner.

4. The petitioner denied the employer-employee relationship. According to the petitioner, the accident occurred in his premises on 21<sup>st</sup> May, 2011 in which some of his employees and other persons namely driver of the vehicle, passersby and colleagues of the drivers suffered injuries. According to the petitioner, respondent No.2 was the companion of the driver who assisted the driver in turning the vehicle and visited the premises to load some articles and suffered injuries. FIR No.228 dated 21<sup>st</sup> May, 2011 under Sections 287/337/34 IPC was registered against the petitioner and Anurag Pal. Without prejudice, it is submitted that the petitioner was running an authorised service centre for LG Electronics and the blast took place in the air conditioner of LG Electronics and LG Electronics provided replacement of new air conditioner to the customer whose air conditioner exploded. It is submitted that LG Electronics impleaded as respondent No.3 is liable to pay the compensation to respondent No.2.

5. Learned counsel for respondent No.3, LG Electronics submits that respondent No.3 was not impleaded as a party before the Commissioner, Employees' Compensation and no issue was framed with respect to the liability of respondent No.3 and respondent No.3 had no opportunity to contest the case before the Commissioner, Employees' Compensation. Learned counsel for respondent No.3 further submits that this writ petition is not maintainable in view of the remedy of an appeal available to the petitioner under Section 30 of the Employee's Compensation Act.

6. Learned counsel for respondent No.2 submits that there is no infirmity in the impugned order dated 22<sup>nd</sup> May, 2015. It is submitted that the respondent No.2 was working as a mechanic with the petitioner and he suffered an accident on 21<sup>st</sup> May, 2011 arising out of and during the course

of his employment. Without prejudice it is submitted that the finding of facts are not open to challenge even in the appeal under Section 30 of the Employees' Compensation Act, which is maintainable only on the substantial questions of law.

7. After hearing the parties, this Court is of the view that respondent No.2 was working as a mechanic with the petitioner for repairing the air-conditioners at the time of the accident and the accident dated 21<sup>st</sup> May, 2011 arose out of and during the course of his employment with the petitioner. Respondent No.2 has lost his fingers of the left hand in the accident. Respondent No.2 is present in Court and his condition has been seen. The photograph of the injured portion of respondent No.2 is taken on record and is annexed as *Annexure-A* to this order (The photograph shall not be uploaded on the website). The award of compensation of Rs.8,18,899/- of the Commissioner, Employees' Compensation is upheld.

8. With respect to the contentions of the petitioner that the petitioner was running an authorised service centre for LG Electronics, a blast took place in the air conditioner of LG Electronics, LG Electronics provided replacement of a new air conditioner to the customer whose air conditioner exploded and LG Electronics should be made liable to pay compensation, this Court is of the view that it would be appropriate to frame an additional issue and remand the matter back to the Commissioner, Employees' Compensation for adjudication of the additional issue, after affording an opportunity of leading evidence to the petitioner as well as respondent No.3. The following additional issue is framed: -

*“Issue No.3. Whether the petitioner is entitled to recover the compensation awarded by the Commissioner, Employees' Compensation from LG Electronics?”*

9. In the facts and circumstances of this case, the impugned order dated

21<sup>st</sup> May, 2015 is upheld insofar as the respondent No.2 is held entitled to compensation of Rs.8,18,899/- along with interest thereon from the petitioner. However, the additional issue No.3, mentioned above, framed with respect to the dispute between the petitioner and respondent No.3 is remanded back to the Commissioner, Employees' Compensation.

10. Petitioner and respondent No.3 shall appear before the Commissioner, Employees' Compensation on 21<sup>st</sup> March, 2018 at 02:00 P.M. The petitioner is permitted to file the amended petition along with amended memo of parties with respect to his claim for recovery rights against LG Electronics before the Commissioner, Employees' Compensation and the Commissioner, Employees' Compensation shall grant four weeks' time to respondent No.3 to file the written statement to the petitioner's claim for recovery rights against respondent No.3. The Commissioner shall thereafter afford an opportunity of leading evidence first to the petitioner and then to respondent No.3. After recording of the evidence, the Commissioner shall pass a fresh order with respect to the additional issue framed by this Court. The petition is disposed of in the above terms.

11. The petitioner has deposited Rs.4,90,450/- with the Registrar General of this Court in terms of the order dated 23<sup>rd</sup> November, 2015. Respondent No.2 is at liberty to execute the impugned order for recovery of the balance award amount from the petitioner in accordance with law.

12. The record of the Commissioner, Employees' Compensation be returned back forthwith along with this order.

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

**J.R. MIDHA, J.**

**FEBRUARY 20, 2018**

**rsk**