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

***Decided on:- 1<sup>st</sup> November, 2019***

+      FAO 362/2018 & CM No. 31008/2018

SANTOSH & ORS

..... Appellants

Through:      Mr. Ashish Tilwani, Adv.

versus

M/S SIMBHAOLI SUGAR MIL

..... Respondent

Through:      Mr. Sudhir Sethi, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1.      The claim case (CEC-D/NW/190/2017/92) under Employees' Compensation Act, 1923, presented by the appellants was sought to be withdrawn also seeking liberty to file a fresh case "due to technical reason". The Commissioner, Employees' Compensation by the impugned order dated 24.01.2018 dismissed the claim case as withdrawn but declined to grant liberty to file a fresh case. It is the said order which is challenged by the appeal at hand.

2.      As has been observed by this Court more than once in similarly placed appeals against identical orders of the same very forum, the impugned order suffers from vice of it being devoid of all reason. [See order dated 09.02.2018 in CM (M) 1399/2017 titled *Abdhesh Sharma vs. Taukeer Ahmed & Ors.* and order dated 09.10.2019 in FAO 345/2018 titled *Upendar Tiwari vs. M/s National Insurance Co. Ltd. & Anr*]. The

Commissioner while declining to grant liberty should have set out his reasons why prayer to that effect could not be granted. The application for withdrawal of the claim case was moved with two prayers. It is not fair to grant part of the prayer while declining the other and thereby non-suiting the party in question. The Commissioner should have remembered that he was exercising jurisdiction in the context of a benevolent legislation. Such approach was neither just nor fair and cannot be approved of.

3. It is now the submission of the appellants through counsel that the application for withdrawal of the claim case was moved on some improper and incorrect legal advice. The claimants are poor and illiterate persons who are not conversant with the niceties of law. They are pursuing the proceedings to seek compensation on account of death of Vinod Kumar, statedly in an incident that occurred in the course of his employment with the respondent. The counsel for the appellants submits that they may be permitted to withdraw the application dated 15.02.2017 whereby the prayer was made for the claim petition to be withdrawn with liberty to file a fresh one.

4. In the above facts and circumstances, the prayer is granted. The impugned order is set aside. The application dated 15.02.2017 seeking withdrawal of the claim case before the concerned forum shall be treated as withdrawn and dismissed accordingly. In the consequence, the claim case stands revived on the file of Commissioner, Employees' Compensation who shall proceed with it further in accordance with law.

5. The parties are directed to appear before the said forum on 25<sup>th</sup> November, 2019.

6. The appeal and the pending application are disposed of in above terms.

**R.K.GAUBA, J.**

**NOVEMBER 01, 2019**

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