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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 8th November, 2019

+ FAO 483/2018 & CM No. 42935/2018

ANIL KUMAR

..... Appellant

Through: Mr. Ashish Tilwani, Adv.

versus

M/S TATA AIG GENERAL INS. CO. LTD. & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This matter is yet another in a series of similarly placed appeals with identical background wherein the prayer of the claimant under Employees' Compensation Act, 1923 for withdrawal of the claim case filed earlier with liberty to file fresh claim case on some ground or the other was granted and while dismissing the respective claim case liberty for filing fresh such claim was declined by the Commissioner, Employees' Compensation. The illustrations include the matters relating to CM (M) 1399/2017 titled *Abdhesh Sharma vs. Taukeer Ahmed & Ors.* decided on 09.02.2018; *FAO 345/2018 titled Upender Tiwari vs. M/s National Insurance Co. Ltd. & Anr.* decided on 09.10.2019 and *Santosh & Ors vs. M/s Simbhaoli Sugar Mill* decided on 01.11.2019.

2. In the present matter also, the appellant who had preferred the claim case for compensation under Section 22 of Employees' Compensation Act

against the respondents was advised by his counsel to first move an application for transfer and since no relief forthcame on that, make a request to press for withdrawal and liberty to file fresh case. The Commissioner, Employees' Compensation Act, the same officer who had handled the above-mentioned earlier cases – by cryptic order passed on 06.09.2017 allowed the prayer for withdrawal of the claim case and dismissed it accordingly but then proceeded to decline liberty by simply observing “*No liberty given*”.

3. The respondents have chosen not to appear in spite of notice of the appeal.

4. Having heard the counsel for the appellant, this Court is of the view that an approach similar to the one adopted in the previous three other matters has to be followed since the order impugned in the appeal declining the liberty is cryptic and devoid of any reason and hence injudicious and consequently unsustainable. The impugned order is, thus, set aside.

5. The counsel for the appellant submits that since the application for withdrawal of the claim case was filed under some deficient legal advice, the appellant now being desirous to press the same claim case before the concerned forum for adjudication as per law, he may be permitted to withdraw the application for withdrawal of the case on which application, the impugned order was passed. Allowed accordingly. The said application shall be treated as withdrawal and dismissed accordingly.

6. In the consequence, the claim case of the appellant stands revived on the file of the Commissioner, Employees' Compensation,

who is directed to proceed further in the matter in accordance with law. The parties are directed to appear before the said forum on 18th December, 2019.

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

R.K.GAUBA, J.

NOVEMBER 08, 2019

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