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

Date of decision: 8th November, 2021

+ **W.P.(C) 3781/2021 and CM APPLs. 11362/2021, 35636/2021**
M/S A CLASS MARBLE INDIA PRIVATE LIMITED Petitioner
Through: Mr. Prateek K. Chadha & Mr. Yash
Sinha, Advocates (M-9871588144)

versus

SH BHIKHO RAM BHIKU RAM Respondent
Through: Mr. R.K. Nain, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned orders dated 14th August, 2020, 18th September, 2020 and 29th September, 2020, passed by the Commissioner under the Employees' Compensation Act, 1923 (*hereinafter "the Act"*), by which the evidence of the Petitioner has been closed/struck off and the Respondent has been awarded a compensation of Rs.7,51,056/- by the Commissioner.
3. The Respondent – Mr. Bhikho Ram was employed as a labourer with the Petitioner. He suffered personal injury due to an accident and the injury led to his right leg becoming dysfunctional. The Petitioner is in the marble business and the labourer was lifting marble slabs when he suffered this injury. He accordingly sought compensation under the Act. The pleadings were completed in the matter and on 28th February, 2020, the Id. counsel for the Petitioner had conducted the cross-examination of the Respondent.
4. On 20th March, 2020, the cross-examination of the witness of the

Respondent was conducted by the counsel and the matter was adjourned to 2nd June, 2020, which is when the pandemic COVID-19 broke out and lockdowns were declared across India. Thus, the Petitioner could not lead evidence thereafter and the matter was repeatedly adjourned on 2nd June, 2020, 3rd July, 2020, 7th August, 2020. Finally, vide order dated 14th August, 2020, the evidence of the Petitioner was struck off. The matter was then heard on 28th August, 2020, 4th September, 2020 and 11th September, 2020 and was reserved for orders. On 18th September, 2020, Rs.50,000/- was imposed as costs on the Petitioner since he had been seeking adjournments on the last two or three dates, and the matter was reserved for orders. Finally, the award was passed on 29th September, 2020, in the following terms:

“But keeping in view the entirety of situation, I am of the view that the earning capacity of the labourer is adjudged to have been reduced to 50% and not 100% as argued. It is also not a case of 20% loss of earning capacity. Hence I hold that the applicant has got the reduction in his earning capacity to 100%. In the given wage, age and loss of earning capacity the applicant/ claimant is entitled to compensation as under:

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|------|------------------------------|---|----------------------|
| i) | Relevant factor of 49 years | : | 156.47 |
| ii) | 60% of wages @ Rs. 8000/- pm | : | Rs.4800/- |
| iii) | Amount of compensation | | |
| | <u>156.47 X 8000 X 60</u> | : | Rs.7,51,056/- |
| | 100 | | |

10. The claimant is entitled to receive injury compensation from respondent. The claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident.

11. Therefore, respondent i.e., M/s A-Class Marble India Pvt. Ltd., 68/2, Najafgarh Road, DLE Industrial Area, Moti Nagar, New Delhi – 110015, is directed to deposit before this

*Authority an amount of **Rs. 7,51,056/- (Rupees Seven Lakh Fifty One Thousand Fifty Six Only)** on account of compensation payable to the claimant along with interest @ 12% p.a. w.e.f. 02.03.2019 till its realization through pay order in favour of “**Commissioner, Employees’ Compensation-IX**” within a period of 30 days from pronouncement of the order before this Authority.”*

5. The submission of ld. counsel for the Petitioner – Mr. Chadha is that during the lockdown and the pandemic, no adverse orders could have been passed, on account of non-appearance before the Commissioner. He relies upon various circulars issued by the High Court of Delhi in this regard. He further submits that the Commissioner did not have facilities for conducting online hearing and hence the Petitioner could not seek a virtual hearing before the Commissioner. He further submits that his defence having been struck off, evidence having been struck off, and the award having been passed *ex parte*, all the defences taken by the Petitioner have not been considered in the impugned order and thus an opportunity ought to be granted to the Petitioner to defend the matter on merits.

6. Mr. Nain, ld. counsel appearing for the Respondent submits that he is a poor labourer who has suffered a serious injury and has been rendered almost unemployable, also suffering severe financial constraints. He further submits that under Section 25A of the Act, the matter has to be disposed of within a period of 3 months from the date of reference.

7. Heard ld. counsel for the parties. A perusal of the order sheets of various dates passed by the Commissioner shows that on all dates, the Petitioner was presented through an authorised representative. The first date when the evidence was to be led by the Petitioner, i.e. 20th March, 2020, was

a date on which lockdown was declared. The fact that online hearings were not being conducted by the Commissioner is not disputed and the Id. Counsel for the Petitioner also fairly concedes that he never requested for one, owing to the fact that there was no facility in the Commissioner's office to hold online hearings. The circulars issued by the Delhi High Court which were also applicable on Trial Courts clearly directed that no adverse orders would be passed, where parties were found to be absent during the pandemic. All the impugned orders beginning from 14th August, 2020 and 18th September, 2020 shows that the evidence has been struck off due to non-appearance of counsels. Costs of Rs.50,000/- were imposed and no arguments were heard and the impugned order awarding of approximately Rs.7.5 lakhs as compensation then came to be passed.

8. This Court is convinced that there is no lack of diligence by the Petitioner. However, due to the pandemic, and the constraints faced by counsels, physical hearings could have been difficult during the said period. In the overall facts and circumstances of the case and considering that the Petitioner deserves an opportunity to present its case on merits, this Court passes the following directions:

- i) The impugned orders dated 14th August, 2020, 18th September, 2020 and 29th September, 2020, are set aside;
- ii) The Petitioner shall be given the opportunity to lead evidence before the Commissioner, on two dates fixed for the said purpose subject to payment of Rs.50,000/- to the Respondent within a period of four weeks from today. The payment of the said amount shall be subject to the final orders to be passed by the Commissioner;
- iii) No unnecessary adjournments shall be sought by the Petitioner;

iv) The Commissioner, at the end of the adjudication, shall also consider if any litigation expenses/costs ought to be awarded and if so, to what extent.

9. Parties to appear before the Commissioner on 15th December, 2021 by which date, the evidence of the Petitioner shall also be filed by way of affidavit(s) with advance copy to Mr. Nain. On the date fixed by the Commissioner, the witnesses of the Petitioner shall appear for cross-examination. The matter shall immediately proceed for final arguments and final orders shall be passed on or before 31st January, 2022.

10. The amount shall be remitted to the Respondent directly into his bank account, details of which shall be supplied by Id. counsel for the Respondent to the counsel for the Petitioner within one week.

11. This Court has not examined the contentions of the parties on merits, which are open for adjudication by the Commissioner without being affected by any observations passed in this Petition.

12. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 8, 2021

Rahul/Mansi