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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of decision: 10<sup>th</sup> August, 2021*  
+ **CM(M) 518/2021 & CM APPLs. 25195-97/2021**  
NEW INDIA ASSURANCE COMPANY LIMITED ..... Petitioner  
Through: Mr. Abhishek Gola, Advocate.  
versus  
SH. NANAK CHAND & ANR. .... Respondents  
Through: Mr. Gautam Narayan, ASC.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the impugned orders dated 11<sup>th</sup> February 2020 and 23<sup>rd</sup> February 2021, passed by the Id. Commissioner, Employees Compensation, Karampura, New Delhi, by which, the Id. Commissioner has permitted the Respondent No. 1-Employee to restore his case for compensation, which was originally withdrawn by him.
3. The brief background of the matter is that a commercial insurance policy was issued by the Petitioner in respect of a commercial vehicle bearing registration no. DL-1GC-2298. As per the version of the Respondent No. 1-Employee, he was employed as a cleaner of the said vehicle and on 26<sup>th</sup> November, 2014, he was hit by an unknown vehicle, while replacing the punctured tyre of the insured vehicle, due to which, he was injured on his left leg. Accordingly, a claim application was originally filed by him in front of the Id. Commissioner under the Employees Compensation Act, 1923 at Sham Nath Marg, Delhi. In the said claim application, a written statement was also filed by the Insurance Company, however thereafter, the matter

was transferred to the Commissioner, District North-East, Jhilmil Colony, Delhi. On 17<sup>th</sup> March 2017, the employee filed an application before the Id. Commissioner for withdrawal of his claim petition. The said application, which is a short one, reads as under:

*“1. The above case was filed for seeking injury compensation before this Hon'ble Court and the injury was caused out of and during the course of employment.*

*2. That the due to technical reason as also the inconvenience of the applicant, he intends to withdraw the instant claim petition. Hence, prayed accordingly to withdraw the same.”*

4. With respect to this application, the Id. Commissioner, on 17<sup>th</sup> March 2017, passed an order to the following effect:

*“Claimant has filed an application for withdrawal of the claim petition.*

*Heard*

*Claim petition dismissed as withdrawn. No liberty given.”*

5. As is clear from the said application filed by the employee, the reason for withdrawal was an alleged *technical reason* and *inconvenience of the Applicant*. The order for dismissing the claim petition clearly records that the same is dismissed as withdrawn and that no liberty was given to the employee, in respect of the said application.

6. Thereafter, a fresh claim petition has been filed by the employee, with the Id. Commissioner, Karampura, claiming compensation under Section 22 of the Employees Compensation Act, in respect of the same incident. Again,

written statement was filed by the Insurance Company in the matter, and vide order dated 18<sup>th</sup> October 2017, the Id. Commissioner held that the said fresh application cannot be heard in view of the earlier dismissal/ withdrawal order dated 17<sup>th</sup> March 2017. The said order dated 18<sup>th</sup> October, 2017, reads as under:-

*“R1 reply filed. Copy received to claimant advocate.*

*Matter adjourned for WS. Issue notice to R2, at this stage in view of order dt. 26.07.2017 it is not required to issue R2. Since matter has been disposed off by the Ld. Commissioner, Prateek Chandra vide order dated 17.03.2017. Since, matter already disposed off. Hence, no steps are required in the matter. This Court remedy available under the Act to petitioner for appeal if so desire.*

*So, accordingly matter disposed off.”*

7. The above extracted order passed by the Id. Commissioner in claim petition No. WC/30/WD/17, was challenged by the Respondent No. 1-Employee, in **FAO 373/2018** titled **Nanak Chand v. M/S The New India Assurance Co. Ltd. & Anr.** In the said appeal, the employee, once again, sought permission to withdraw the appeal, with liberty to avail other remedies in law. The order dated 30<sup>th</sup> July 2019, passed by a Id. Single Judge of this court, in the said appeal, reads as under:-

*“1. Mr. R.K. Nain, learned counsel for the appellant, on instructions, seeks permission to withdraw the appeal with liberty to avail other remedies as available in law.*

*2. The appeal along with application, being C.M. No.31954/2018, is dismissed as withdrawn with liberty, as prayed for.”*

8. Thereafter, on the strength of this order dated 30<sup>th</sup> July 2019, passed in **FAO 373/2018**, another fresh application was filed before the Id. Commissioner, Karampura, for restoration of the claim petition. It is in this application that the impugned orders have been passed by the Id. Commissioner, allowing the restoration of the claim petition of the employee.

9. The operative portion of the impugned order dated 11<sup>th</sup> February 2020, reads as under:

*“I have heard both the Ld. Counsel carefully and gone through the pleadings and come to this conclusion that employees compensation Act is enacted by the parliament of Govt. of India for weaker section of employee who received injury or death out of and in the course of their employment. If I consider the provision of the Act very technically than it could be quite possible that no poor employee can get success to get his legitimate right under the Act. Further, rule 24(2) provides that if in summary trail case has been decided then he can avail opportunity under rule 24(2). Further I am of the view that if I will hear this matter on merit than no party can suffer for this and for ever this matter can be decided on merit. In view of this I am not connivance by arguments lead by Ld. Counsel for respondent no.2 thus I allowed application and restore the case accordingly. Respondents are directed to file reply in the matter. Accordingly, matter is adjourned for 25.02.2020.”*

*(Extracted verbatim)*

There are some obvious language errors in the above order. However, in this order, the reasoning appeared to have been given by the Id. Commissioner is

that since the employee belongs to a weaker section of the society, he deserves to be heard on merits, and accordingly, his claim petition has been restored.

10. The above chronology of events shows that the Respondent No. 1-Employee, initially filed the claim before the Id. Commissioner, Sham Nath Marg, which was transferred to the Id. Commissioner, Jhilmil Colony. The said claim petition was then withdrawn. Thereafter, he sought to file another petition before the Id. Commissioner, under the same Act, in Karampura. In respect of the said claim petition filed in Karampura, which was dismissed earlier, restoration has been allowed by the Id. Commissioner.

11. While there can be no doubt that an employee's claim in respect of insurance deserves to be heard on merits, no employee ought to be permitted to repeatedly file petitions in fora of his/her choice. In the first claim petition filed by the employee, the reason/ ground that was pressed for withdrawal, which is extracted above, was very cryptic. Further, while disposing of the petition and allowing the application for withdrawal, the Id. Commissioner, Jhilmil Colony, specifically did not grant any liberty in the matter.

12. Id. Counsel for the Petitioner, Mr. Abhishek, submits that the Insurance Company is repeatedly being made to face these petitions in different forums due to employees who seek to file them before different officers. He submits that the same has become a common practice in employee compensation cases. This Court is of the opinion that there are issues of '*forum shopping*' in proceedings of this nature which is a matter of concern.

13. This Court does not wish to entertain the present petition, inasmuch as the claim petition has been restored to be heard on merits, and no order has

been passed against the insurance company at his stage. The Id. Commissioner can proceed to hear the claim petition of the Respondent No. 1- Employee on merits. However, it is made clear that the Insurance Company would be entitled to take this alleged plea of '*forum shopping*' on the part of the employee, in any challenge to the final order, if the same is passed against the Insurance company.

14. Further, in order to enquire into and take adequate remedial steps in such matters, this Court has requested to Mr. Gautam Narayan, Id. ASC for the GNCTD, to appear in the matter. The GNCTD would accordingly look into the matter and ensure that appropriate instructions are passed in order to ensure that the claimants and parties who are litigating before the various Commissioners under the Employees Compensation Act, 1923, are not permitted to misuse or abuse the process of law by attempting to file the same cases in different forums of their choice, or by indulging in '*forum shopping*'. Mr. Gautam Narayan, Id. ASC submits that he would communicate a copy of this order to the Chief Secretary, GNCTD, in order to ensure that adequate remedial measures are taken in this regard.

15. The present petition and all pending applications are disposed of in the above terms. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

**PRATHIBA M. SINGH**  
**JUDGE**

**AUGUST 10, 2021**  
**MR/AK**