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

% *Decision delivered on: 16.12.2021*

+ **LPA 480/2021 & CM No.45567/2021**

A CLASS MARBLES INDIA PRIVATE LIMITED Appellant

Through : Mr Prateek K. Chadha, Adv.

versus

SH. BHIKHO RAM @ BHIKU RAM

.....Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Physical hearing/Hybrid hearing (as per request)]

RAJIV SHAKDHER, J.:-

1. This is an appeal directed against that part of the judgment of the learned Single Judge dated 08.11.2021, passed in W.P.(C) No.3781/2021, whereby, the appellant-company has been directed to pay Rs. 50,000/- to the respondent.

1.1 *Via* the aforementioned writ petition, the appellant-company had assailed the orders dated 14.08.2020, 18.09.2020 and 29.09.2020 passed by the Commissioner under the Employee's Compensation Act, 1923 [in short "the 1923 Act"].

1.2. The Commissioner, *vide* order dated 29.09.2020, awarded, by way of compensation to the respondent Rs.7, 51,056/-, along with interest at the rate of 12% per annum with effect from 02.03.2019 till the date of realization. The Commissioner, *via* the said order, gave 30 days to the appellant-company for compliance; commencing from the date when the order was pronounced.

2. Thus, in effect, the learned Single Judge has allowed the writ petition, albeit, with one caveat, which is alluded to hereinabove. The caveat being, that the appellant-company has been directed to pay Rs.50,000/- to the respondent, within four weeks from the date of the judgment.

2.1. In short, the grievance that the appellant-company articulated before the learned single judge, essentially, veered around one single issue, which is, that due opportunity to defend the case had not been provided by the Commissioner.

2.2 In this context, the appellant-company brought to fore, dates and events to demonstrate that because the Covid-19 pandemic was raging in the city (which resulted in a lockdown), it could not place its defence before the Commissioner.

2.3. The learned Single Judge, having examined the record and, in particular, the order sheet of each proceeding, agreed that the appellant-company deserves another opportunity to present its defence.

2.4. Accordingly, the learned Single Judge disposed of the writ petition with the following operative directions:

“.....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....”

(emphasis is ours)

3. Mr Prateek K. Chadha, who appears on behalf of the appellant-company, says that, once the learned Single Judge found that there was “no lack of diligence” displayed by the appellant-company in defending its case, the direction issued for payment of Rs.50,000/- to the respondent, is bereft of both basis and rationale.

3.1 Therefore, in a nutshell, the appellant-company is aggrieved, as noticed above, with this part of the direction, contained in paragraph 8(ii) of the impugned judgment dated 08.11.2021.

4. We have heard the counsel for the appellant-company and examined the record.

4.1. The record shows that the respondent who was employed to offload marble slabs from trucks that were parked in the premises of the appellant-company, suffered an injury on 10.02.2019 when one of the marble slabs broke and fell on his right leg. This resulted in the respondent injuring his right leg.

4.2. The appellant–company took the stand, both, before the Commissioner as well as the learned Single Judge that, the respondent was attended to immediately, and the cost incurred towards his surgery was borne by it.

4.3. It is also claimed by the appellant–company that, in addition thereto, Rs.10,000/- was paid to the respondent.

5. On the other hand, the stand of the respondent before the Commissioner was that he had suffered 100% disability, and was, therefore, unable to perform any work. It is in this background, that after appreciating the evidence on record, the Commissioner awarded compensation to the respondent, as noticed above, vide order dated 29.09.2020. The relevant part of the order reads thus:

*“..In the claim application, it has been stated that the applicant was drawing wages @ Rs.16,000/- per month including overtime charges. The respondent has not admitted the employee employer relationship and accident out of and during the course of employment hence there was no question of stating anything about payment of any amount of wages. But for the purpose of compensation, the permissible wage can be Rs.8,000/- as per Govt. of India notification dated 31.05.2010. It has been further stated he was 48 years of age on the date of accident. As per his Aadhar card his date of birth has been shown 01.01.1971. **The accident took place on 10.02.2019 by that he had completed 49 years of his age. He was got himself physically examined and Medical Board of Aruna Asaf Ali Hospital, Delhi has assessed his 20% permanent disabled. In his medical Disability Certificate, his injury has been shown ‘Right Lower Limb’. The documents and the Medical Certificate show that the claimant may not be able to do any physical work of the nature. In this regard, the question as to reduction in earning capacity was argued by the both parties. Ld. Counsel for the claimant argued that as the workman was working***

as Labourer which he was doing to prior this accident as his occupation, after sustainment of injury, he has been rendered unfit to do his work of Labourer more so any physical work. Though his physical disablement might not be given as total but the loss of his earning capacity be treated as total. Finding the nature of work, it should be accepted that it is a case of 100% loss of earning capacity.....

.....Here the applicant was a loader by occupation after having his leg injured he is no more in a position to perform the work of a manual labour.

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%.....”

(emphasis is ours)

- 5.1. As would be evident from reading the aforesaid extract, the Commissioner noticed the appellant–company’s defence that there was no employer-employee relationship between itself and the respondent.
- 5.2. The record shows that the appellant–company claims that the respondent was engaged, *via* a contractor.
- 5.3. The adjudicatory exercise conducted by the Commissioner is now set at nought, as the learned Single Judge felt that the appellant–company had not had its day in the court.
6. The learned Single Judge, thus, directed payment of Rs.50,000/- by the appellant–company, subject to the final orders that the Commissioner may pass in the proceeding, post the remand.

6.1. Therefore, apart from anything else, to our minds, it is a *protem* payment that the appellant–company has to make, given the fact that the respondent suffered an injury on 10.02.2019, and if his stand is to be believed, he is unable to perform any work, or at least has been denuded of means of making a living for himself.

6.2. Furthermore, it appears that the genesis of the direction for payment of Rs.50,000/-i.e., the quantum, is rooted in the manner in which the case proceeded before the Commissioner; exacerbating the respondent's position.

6.3. The record shows that up-until 28.02.2020 when the respondent's cross-examination was completed and a direction was issued to the appellant–company to place on record its affidavit of evidence, the matter was proceeding at a reasonable pace before the Commissioner.

6.4. After the declaration of the lockdown, on 20.03.2020 [which is when the next date in the matter was fixed before the Commissioner], it was adjourned on that date, and, thereafter, on 02.06.2020 and 03.07.2020 as well. Notably, on 03.07.2020, the respondent's representative was present, although, there was no appearance on behalf of the appellant–company.

6.5. Likewise, on 14.08.2020, although the respondent's representative was present, the appellant–company was represented by one Mr Tarun, Assistant Manager (Administration). On this date, the Commissioner passed the following order :

“Despite given sufficient opportunities to the respondent to lead evidence, but he failed, as such I have no option except to strike of the right of respondent to lead evidence. Accordingly, matter adj. for 25.8.2020 at 10.00 A.M.”

6.6. Thereafter, the position remained the same on two successive dates i.e., 28.08.2020 and 04.09.2020. On both these dates, the respondent was represented by an advocate, while the appellant-company was represented by Mr Tarun i.e., Assistant Manager (Administration).

6.7. It is only on 11.09.2020 that the Commissioner reserved the matter for orders, and, for that purpose, indicated 15.09.2020, as the date on which the order would be pronounced. On that date, the Commissioner recorded the following:

“Sufficient opp. given to Res. to file Argument but failed to do so. As such it appears Respt. do not want to lead Argument. Matter reserved for order on 15.9.20 at 10.00 AM.”

6.8. The appellant-company has not put on record, the order sheet of 15.09.2020. The next order sheet, which is placed on record concerns proceedings of 18.09.2020, when, the learned Commissioner recorded the following:

“Since last two three days AR of Respt. is appearing in the proceeding & on each dates they have been directed to file WS on record, but on each date they have sought adj. on one or other request. On last date it was made clear to him that no further opportunity for filing WS shall be granted. But again today they appeared and requesting for adj. It seems that resp. has taken very lightly proceeding of this Court. While this case belongs to compensation regarding injury of claimant. Hence, I do not consider request of respondent for further adj. Taking serious view in the matter, cost of Rs.50,000/- is imposed upon the resp. same shall be recovered along with main order under Section 31. Accordingly, matter reserve for order.”

6.9. As would be noticed, the Commissioner refused to accommodate the appellant-company any further, and imposed a cost of Rs.50,000/-.

7. Thus, what is apparent is that the direction issued by the learned Single Judge via the impugned judgment, calling upon the appellant-company to pay Rs.50,000/- is triggered, not on account of the appellant-company causing a delay in the conclusion of the case [which was the reason given by the Commissioner] but on account of the fact that it involved a compensation claim concerning injury inflicted on the respondent.

8. It is because of the prevalence of pandemic that the learned Single Judge accepted the plea advanced on behalf of the appellant-company that it should get another opportunity to defend its case.

8.1. The learned Single Judge has, in a sense, tried to balance the equities and, perhaps, provided *protem* relief to the respondent by directing the appellant-company to pay Rs.50,000/-, subject to the final orders that the Commissioner may pass in the matter.

8.2. This direction, in our opinion, is not in dissonance with the earlier part of the observations made by the learned Single Judge that there was “no lack of diligence” on the part of the appellant-company. The observation that there was no lack of diligence on the part of the appellant-company is the edifice that the learned Single Judge has provided in concluding that the appellant-company deserved a second chance. This observation, however, in our view, has nothing to do with the direction for payment of Rs.50,000/-.

9. In our opinion, while the pandemic, as contended by Mr Chadha, may

have impeded the appellant-company in effectively defending its case, in the absence of its advocate, the impact of the pandemic could not have been any less on the respondent.

9.1. As noticed above, the respondent, being eager to bring the case to fruition had his advocate remain present at almost every hearing. The respondent, perhaps, did not have the luxury of waiting; he took his chances even during the pandemic.

10. We are, therefore, not inclined to interdict the impugned direction contained in the judgment of the learned Single Judge.

10.1. Thus, for the foregoing reasons, we find no merit in the appeal.

11. The appeal is, accordingly, dismissed. Consequently, the pending application shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

DECEMBER 16, 2021/aj

Click here to check corrigendum, if any