

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
FAO 49/2018, CM APPL. 5333/2021 and CM APPL. 36339/2021

Date of Decision: 27.10.2022

IN THE MATTER OF:

GULJARI HARIJAN & ORS.

..... Appellants

Through: Mr. R.K. Nain, Advocate

versus

M/S SHRI RAM GENERAL INSURANCE CO. LTD. & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'Act'), the appellants/claimants have assailed the order dated 13.12.2017 passed by the learned Commissioner, Employees' Compensation, District North-West, Vishwakarma Nagar, Jhilmil Colony, Delhi in Case No. WCD/111/NW/17/706 titled as Sh. Guljari Harijan & Anr. v. Sh. Lalit Prasad & Ors.

2. The appellants (parents of *Late Sh. Tinku Kumar*) had initially filed a claim petition under Section 22 of the Act before the learned Commissioner, District North-West, 5, Sham Nath Marg, Delhi on 06.12.2016. In the petition, it was claimed that *Sh. Tinku Kumar* was employed as a driver on

vehicle bearing No. DL-1LM-6643 at a salary of Rs.8,000/- per month plus Rs.200/- per day as food allowance. The said vehicle was stated to be owned by respondent No.2/*Lali Parsad* and managed by respondent No.3/*Ajay Singh*.

On 23.12.2015, when *Sh. Tinku Kumar* was driving the vehicle from *Sadaz Bazar* to *Bawana* and had reached near *G.T.K. Depot*, the vehicle rammed into another vehicle on account of poor visibility, as the latter was being stranded on the road without any indication. *Sh. Tinku Kumar* sustained grievous injuries and was removed to *Babu Jagjivan Ram Memorial Hospital, Delhi* where he succumbed to injuries. Subsequent thereto, post-mortem was conducted and the body was handed over to the family. An FIR bearing No. 1159/2015 came to be registered under Sections 279/337 IPC at P.S. Mahendra Park. It was stated that at the time of accident, the vehicle was insured with respondent No.1/M/s Shri Ram General Insurance Co. Ltd. and that an additional premium was charged by it from respondent No.2 under the Act. It was further claimed that *Sh. Tinku Kumar* was an employee of respondent Nos.2 and 3 and had died during the course of employment.

3. It is averred in the instant appeal that the claim petition was transferred to East District without assigning any reason and as the same was not convenient for the appellants, they sought its transfer to District North-West. The said request was not acceded to and the appellants thereafter preferred an application dated 22.02.2017 seeking leave to withdraw the claim petition. It was stated in the application that '*due to technical reason the applicant intends to withdraw the instant claim petition with the liberty to file a fresh one*'. The claim petition was permitted to be

withdrawn by the learned Commissioner on 22.02.2017 however, ‘*no liberty*’ was granted. It is worthwhile to note that while not granting the liberty, no reason was given.

4. Later, the appellants filed a second claim petition under Section 22 of the Act before the learned Commissioner, District North-West, Nimri Colony, Ashok Vihar, Delhi on 16.03.2017, which came to be dismissed vide the impugned order on the ground that principles of *res judicata* apply in the present case and the only course of action left with the appellants was to file an appeal against the order dated 22.02.2017. It was further observed that the factum of earlier dismissal of the claim petition was not mentioned properly in the second claim petition and amounts to concealment of material facts.

5. Learned counsel for the appellants submits that the impugned order is illegal, as the same deprives the appellants of their statutory right to seek compensation. It is submitted that vide the impugned order, the learned Commissioner erred in observing that the second claim petition filed on behalf of the appellants was barred by principles of *res judicata*.

6. As noted above, this Court is constrained to note that though the appellants first claim petition was permitted to be withdrawn albeit without granting liberty although the same was prayed for. The second claim petition came to be dismissed on the ground by applying the principles of *res judicata*. A perusal of the impugned order would show that though the learned Commissioner noted the facts of the case, however the claim petition was not considered on merits but was rather dismissed on the aforesaid sole ground by a non-speaking order.

7. Time and again, the Supreme Court has taken the view that reasons

form the heart and soul of every order/pronouncement, and as such, the importance of citing reasons in an order cannot be gainsaid. To elucidate, in Secretary and Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity and Others reported as **(2010) 3 SCC 732**, it was opined as follows:-

“40. It is a settled legal proposition that not only administrative but also a judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice-delivery system, to make known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. “The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. ” (Vide State of Orissa v. Dhaniram Luhar and State of Rajasthan v. Sohan Lal)

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. (Vide Raj Kishore Jha v. State of Bihar, SCC p. 527, para 19; Vishnu Dev Sharma v. State of U.P., SAIL v. STO, State of Uttaranchal v. Sunil Kumar Singh Negi; U.P. SRTC v. Jagdish Prasad Gupta, Ram Phal v. State of Haryana, Mohd. Yusuf v. Faij Mohammad and State of H.P. v. Sada Ram.)

42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected.”

8 Besides, labour statutes, such as the Act, constitute ‘beneficial legislation’, enacted for the welfare of employees/workmen [Refer: New India Assurance Co. Ltd. v. Puran Lal and Others reported as **2021 SCC OnLine Del 3483**]. In this regard, a Co-ordinate Bench of this Court in Shri. Krishan v. Jasoda Devi and Ors. reported as **2017 SCC OnLine Del 11137** has opined thus:-

“43.1. The Employees' Compensation Act, 1923 is a piece of social beneficial legislation and its provisions have to be interpreted in a manner so as not to deprive the employees of the benefit of the legislation.

43.2. The object for enacting the Employees' Compensation Act even as early as 1923 was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits.”

9. Notably, facts of the present case are squarely covered by the decision of a Co-ordinate Bench of this Court in Upender Tiwari v. M/s National Insurance Co Ltd. & Anr., **FAO 345/2018**, wherein while setting aside the impugned order and reviving the compensation application, it was held as under:-

“...It is noted that in the proceedings arising out of the case of Abdhesh Sharma (supra), an explanation had been called for as to why a cryptic and non-speaking order had been passed, it not

indicating as to what was the “liberty” that had been sought or as to why it had been not granted. A counsel had appeared before this court in the case of Abdhesh Sharma (supra) on behalf of the Commissioner, Employees’ Compensation and, on her request the said matter was remitted for fresh order to be passed, it having been assured on behalf of the Commissioner, Employees’ Compensation that the fresh order would indicate the reasons and not be a non-speaking order.”

10. Lately, this Court in Hakim Singh v. M/s New Kanpur Agra Transport Company & Anr., **FAO 134/2018** in alike facts and circumstances while setting aside the impugned order therein, revived the second claim application of the appellant and directed the same to be decided in accordance with law.

11. In view of the foregoing decisions, this Court deems it apposite to allow the present appeal. Accordingly, the impugned order dated 13.12.2017 is set aside and the second claim petition of the appellants is revived.

12. Let the second claim petition of the appellants be listed before the concerned Commissioner, Employees’ Compensation on 14.11.2022 to be decided in accordance with law. The party, who is present in Court, is directed to appear before the concerned Commissioner on the said date.

13. With the aforesaid observations, the appeal is disposed of alongwith the pending applications.

14. The Registry shall communicate a copy of this order to the concerned Commissioner, Employees’ Compensation.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 27, 2022/na