

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
FAO 103/2018

Date of Decision: 25.11.2022

IN THE MATTER OF:

NEELAM KUMARI & ORS. Appellants

Through: Mr. R.K. Nain and Ms. Shalu, Advocates

versus

M/S THE NEW INDIA ASSURANCE CO. LTD. & ANR.

..... Respondents

Through: Mr. Pankaj Seth, Advocate for
respondent No. 1

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.

2. The appellants had initially filed a claim application under Section 22 of the Act before the learned Commissioner, District North-West, 5, Sham Nath Marg, Delhi on 11.11.2016. In the claim application, it was claimed that *Sh. Harbans Lal* (the deceased) was employed as a driver on vehicle

bearing No. HR-55V-2562 at a salary of Rs.9,000/- per month plus Rs.200/- per day as food allowance. The said vehicle was stated to be owned by respondent No. 2/respondent No. 1 and insured with respondent No. 1 (respondent No. 2 therein).

It was averred that on 24.04.2016, when *Sh. Harbans Lal* was driving the vehicle from *Delhi* to *Bangalore* and had reached within the jurisdiction of Police Station Managuli, Bijapur, Karnataka, he had acute pain as there was lot of stress and strain in the long and tiresome driving. It was claimed that since *Sh. Harbans Lal* was feeling uneasy and having difficulty in breathing, he parked the truck at a nearby *dhaba*. While lying down on a cot, he passed away. It was further claimed that the deceased was under stress and strain of heavy work load and passed away during the course of employment. The post-mortem of the body was conducted at *District Hospital, Bijapur*.

3. It is averred in the instant appeal that in the proceedings before the Commissioner, the appellant filed an application seeking to withdraw the claim application. 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 The claim application was permitted to be withdrawn by the learned Commissioner on 17.02.2017.

4. Later, the appellants filed a second claim application under Section 22 of the Act before the learned Commissioner, District North-West, Nimri Colony, Ashok Vihar, Delhi on 22.02.2017, 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 17.02.2017. 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 arbitrary and illegal, as the same deprives the appellants of their statutory right to seek compensation. It is submitted that vide the impugned order, learned Commissioner erred in concluding that the second claim application 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 application was permitted to be withdrawn albeit without granting liberty although the same was prayed for. The second claim application 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 application 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 Guljari Harijan and Ors. v. Shri Ram General Insurance Co. Ltd. & Ors. reported as **MANU/DE/4251/2022** in alike facts and circumstances while setting aside the impugned order therein, revived

the second claim application 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 application of the appellants is revived.

12. Let the second claim application of the appellants be listed before the concerned Commissioner, Employees' Compensation on 20.12.2022 to be decided in accordance with law. The parties, who are present in Court, are directed to appear before the concerned Commissioner on the said date.

13. With the aforesaid observations, the appeal is disposed of alongwith pending application, if any.

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

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 25, 2022

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