



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

Date of Decision: 27.09.2022

+ **FAO 330/2018**

IN THE MATTER OF:

BHAGYA SHREE & ANR. Appellants

Through: **Mr.R.K.Nain, Advocate**

versus

M/S NATIONAL INSURANCE CO. LTD. & ANR. ..Respondents

Through: **Mr.Manoj Bhandari, Advocate for
respondent No.1. (Through V.C.)
Mr.K.S.Malik, Advocate for respondent
No.2.**

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 '*EC Act*'), the appellants have assailed the order dated 23.04.2018 passed by the learned Commissioner, Employees' Compensation, District North-West, Nimri Colony, Ashok Vihar, Delhi in Case No. WCD/113/NW/17.

Vide the impugned order, learned Commissioner, while hearing an application filed on behalf of the claimants under Rule 24 (2) of the EC Act came to the conclusion that since the earlier order dated 12.02.2018 was not passed under Rule 24 (1) of the EC Act, the application was not maintainable.

2. Mr.R.K.Nain, learned counsel for the appellants, submits that in the present appeal, the appellants have not only assailed the impugned order dated 23.04.2018, but also the order dated 12.02.2018. He further submits that vide



order dated 12.02.2018, learned Commissioner while rejecting the application seeking transfer of the case from the jurisdiction of North-East District to North-West District had dismissed the claim petition itself for 'non-pursuit'. It is prayed that the matter may be remanded back for consideration on merits.

3. While Mr. Malik, learned counsel for respondent No.2, has no objection to the aforesaid prayer, Mr.Bhandari, learned counsel for respondent No.1, has opposed it.

4. I have heard learned counsels for the parties and gone through the entire case record.

5. A perusal of the record would show that in the claim petition, it was claimed that deceased/*Sh. Rajan Singh @ Rajender Singh* was employed as a driver on vehicle bearing No. HR-38S-2599 (a truck) and had last drawn wages of Rs.8,000/- per month. On 30.11.2016, during the course of employment, he met with an accident when the truck driven by him lost its balance and overturned, resulting in fatal injuries. It was mentioned that the said vehicle was owned by respondent No.2 and insured with respondent No.1 i.e., M/s National Insurance Co. Ltd. vide a valid and subsisting insurance policy.

6. During the pendency of the claim petition, the same was ordered to be adjudicated in the North-East District. Aggrieved, the claimants preferred an application seeking transfer of the claim petition from the jurisdiction of North-East District to North-West District citing inconvenience likely to be caused to them in pursuing the reliefs in the North-East District.

The matter came up before the concerned Commissioner on 12.02.2018 for hearing of the application filed on behalf of the claimants for transfer as well as the claim petition. On the said date, the learned Commissioner came to the conclusion that no sufficient grounds were made out for transfer of the case. Simultaneously, the learned Commissioner also



considered the issues framed on the basis of pleadings, but instead of deciding the claim petition on merits, took into account the conduct of clerk of claimants' counsel and dismissed the claim petition for 'non-pursuit'.

7. This Court is of the opinion that instead of dismissing the claim petition for 'non-pursuit', learned Commissioner ought to have put the claimants/their counsel on notice. Notably, the impugned order further does not hold ground on the touchstone of salient principles of natural justice as it also records that '*no liberty given to the claimant to file a fresh case*'.

8. There is no gainsaying that labour statutes such as the EC Act constitute 'beneficial legislation' for the welfare of workmen and should be liberally construed in their favour. In this regard, the Supreme Court in Jaya Biswal and Others v. Branch Manager, IFFCO Tokio General Insurance Company Limited and Another reported as **(2016) 11 SCC 201** has opined thus:-

"20. The EC Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act which reads as under:

"An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident."

This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under:

"... The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their



workmen should mitigate the effects to such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workman may be expected."

(emphasis supplied)"

9. Mr.Nain, learned counsel for the appellants, on instructions, submits that the claimants would not press their application for transfer of the claim petition and would appear before learned Commissioner, Employees' Compensation, North-East District.

10. Keeping in view the facts and circumstances of the case as well as the no-objection recorded hereinabove, this Court is of the view that ends of justice would be met if the matter is remanded back to the Court of learned Commissioner, North-East District for consideration on merits.

11. Accordingly, the orders dated 12.02.2018 and 23.04.2018 are set aside and the matter is directed to be listed before the Commissioner, Employees' Compensation, North-East District on 10.10.2022.

12. The appeal is disposed of in the above terms.

13. A copy of this order be communicated to the Commissioner, Employees' Compensation, North-East District.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 27, 2022/v