

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

+ **FAO 475/2018**

Date of Decision: 15.12.2022

IN THE MATTER OF:

GURMIT SINGH

..... Appellant

Through: Mr. R.K. Nain and Mr. Chandan
Prajapati, Advocates

Versus

**M/S CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD &
ANR.**

..... Respondents

Through: Mr. Pankaj Gupta and Ms. Suman
Bagga, Advocates for respondent
No. 1

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 41745/2018 (Delay)

1. By way of present application filed under Section 5 of the Limitation Act read with Section 30(2) of the Employees' Compensation Act, 1923 (hereinafter, referred to as the '*EC Act*'), the appellant seeks condonation of delay of 331 days in filing the present appeal.

2. Mr. R.K. Nain, learned counsel for the appellant submits that the appellant was employed as a driver on a truck owned by respondent No. 2, which met with an accident on 01.01.2015. It was claimed that the

appellant sustained grievous injuries in the said accident, after which he had no source of income. It is stated that the appellant is a poor person and could not seek appropriate legal advice timely for want of funds. Further, though the impugned order was passed on 14.08.2017, a copy of the same was only received by the appellant much later. Therefore, in view of the aforementioned submissions and the facts and circumstances of the case, the application is allowed and the delay of 331 days in filing the accompanying appeal is condoned.

3. The application stands disposed of in the above terms.

FAO 475/2018

1. By way of present appeal filed under Section 30 of the EC Act, the appellant/claimant has assailed the order dated 14.08.2017 passed by the learned Commissioner, Employees' Compensation, District East, Delhi in Case No. WC/222/NW/2015.

2. The appellant had initially filed a claim petition under Section 22 of the EC Act before the learned Commissioner, District North-West, Nimri Colony, Ashok Vihar, Delhi on 26.11.2015. It was claimed that the appellant was employed as a first driver on vehicle bearing No. HR-55-T-7506 (Truck) at a salary of Rs.9,000/- per month plus Rs.200/- per day as food allowance. On 01.01.2015, the appellant after getting his vehicle loaded with apples at *Delhi*, left for *Bangalore*. *Sh. Nand Lal* accompanied the appellant on the journey as a second driver. It was claimed that when the truck had reached *Jaipur Bypass*, its tyre got burst. At the time of the incident, the truck was driven by *Sh. Nand Lal*. The truck lost control and fell from a flyover on the road beneath it. It was stated that the appellant as well as *Sh. Nand Lal* sustained grievous

injuries and were taken to a hospital. It was further claimed that at the time of accident, the vehicle was owned by respondent No. 2 (respondent No. 1 therein) and insured with respondent No. 1 (respondent No. 2 therein). It was stated that respondent No. 1 had also charged additional premium from respondent No. 2 under the EC Act. It was averred that post accident, the appellant had become 100% disabled for the purpose of his employment as a driver and his earning capacity has been totally reduced.

3. A perusal of the record would show that both the respondents have filed their respective written statement. The appellant and respondent No. 1 have also filed evidence by way of affidavit(s). During the pendency of proceedings before the Commissioner, an application came to be filed on behalf of the appellant seeking withdrawal of the claim petition with liberty to file afresh. Vide the impugned order, claim petition was permitted to be withdrawn however, no liberty was granted.

4. Learned counsel for the appellant has assailed the impugned order by contending that the order has deprived the appellant of his statutory right to seek compensation. Learned counsel for respondent No. 1, on the other hand, has supported the impugned order.

5. I have heard learned counsels for the parties and gone through the entire material placed on record.

6. A perusal of the case records show that the appellant's claim petition filed before the learned Commissioner was permitted to be withdrawn on account of an application filed on his behalf. In the withdrawal application, it was averred that the claim petition was being withdrawn because the appellant intended to file a fresh petition. This

Court is constrained to note that neither the appellant's application was considered on merits nor any reasons was given to deny the liberty.

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 14.08.2017 is set aside and the claim application of the appellant is revived.

12. Let the claim application of the appellant be listed before the concerned Commissioner, Employees' Compensation on 10.01.2023 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.

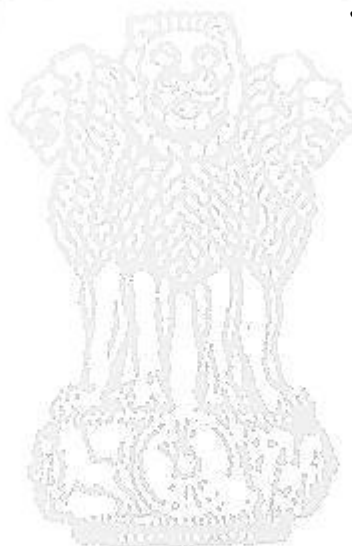
13. With the aforesaid observations, the appeal is disposed of alongwith pending application, if any.

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

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 15, 2022

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