



\$~9

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

+ **FAO 46/2016**

UNITED INDIA INSURANCE CO LTDAppellant

Through: None.

versus

RAMDHARI & ANRRespondents

Through: Mr. Sanobar Ali, Adv. for R1.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **06.05.2025**

CM APPL. 23200/2023

1. This application has been moved on behalf of the applicant/respondent no.1/injured seeking release of the balance 50% amount of compensation, which has been awarded to the respondent no.1 by the learned Commissioner, Employee's Compensation *vide* impugned judgment cum award dated 18.11.2015.

2. A perusal of the record shows that on filing of the present appeal under Section 30 of the Employee's Compensation Act, 1923 ('**EC Act**'), this Court *vide* order dated 03.02.2016 recorded the main objection of the appellant/insurance company to the effect that it was not given any opportunity to adduce evidence by the learned Commissioner. Hence, by way of an interim order, this Court directed that 50% of the amount towards compensation be released to the respondent/injured on furnishing an undertaking that in the event any order is passed to the contrary, the claimant shall abide by the same.

3. Learned counsel for the respondent no.1 invited the attention of this Court to the order dated 12.10.2023, whereby the present



application was moved for release of the balance amount of compensation deposited with the learned Commissioner, Employee's Compensation.

4. As rightly submitted by the learned counsel for the applicant/respondent no.1, a notice of the present application has already been served upon the non-applicant/appellant/insurance company, and this Court *vide* order dated 12.10.2023 specifically provided that in the event no reply is filed by the non-applicant/appellant/insurance company, the Court may allow the present application.

5. Today, no one has appeared for the appellant/insurance company when the matter was called.

6. A perusal of the record shows that no appearance has been entered on behalf of the non-applicant/appellant/insurance company for the last four dates i.e. 15.03.2024, 13.05.2024, 28.10.2024 & 20.12.2024.

7. In view of the above, learned counsel for the applicant/respondent no.1 has been called upon to address arguments on merits.

FAO 46/2016

8. Having heard the learned counsel for the applicant/respondent no.1 and on perusal of the record, this Court finds that the present appeal is bereft of any merit.

9. A careful perusal of the impugned judgment cum award dated 18.11.2015 would show that the existence of relationship of employee and employer between the respondent no.1/injured and the respondent no.2/employer was admitted. The respondent no.1/injured was working as a helper since 2007 and it was also established on the



record that at the time of accident he was working as a Senior Foreman at the construction site of the respondent no.2/employer.

10. It appears that on 12.01.2014, the respondent no.1 suffered grievous injuries when he fell from a height and sustained a fracture on his right hip rendering him permanently disabled. At this juncture, it would be apposite to reproduce the findings recorded by the learned Commissioner, Employee's Compensation which read as under: -

“6. In view of admission of Respondent No.1 regarding employment and injury of petitioner and coverage under policy in question with respondent no.2, I do not find for further trial in the matter. Accordingly, I have come to this conclusion on the basis of contents of claim application, documents placed on record and arguments adduced by Ld. Counsels for the parties that petitioner Sh. Ram Dhari was in the employment of R-1 on 12.1.2014 and out of and in the course of his employment, he sustained grievous injuries due to this, he got fractured on the right hip and thereafter, he is on the ridden bed and unable to perform his duties as a Foreman post before accident. Doctor of the Bhagat Chandra Hospital where he was got admitted for treatment opined replacement of hip by 2nd surgery. Accordingly, petitioner became 100% disabled for the category of his employment and lost 100% earning capacity after this accident. In view of these findings, petitioner is entitled to receive 100% injury compensation under the Act from the Respondents jointly or severally. Since petitioner was insured by Respondent NO.2 under insurance policy as discussed above, Respondent No.2, insurance. Co. i.e. M/s. United India Insurance Co. Ltd. is liable to indemnify to the petitioner on behalf of Respondent No.1.

7. In view of above discussion for calculation of injury compensation, age of petitioner 36 years on the basis of birth certificate placed on record, relevant factor 194.64 and 60% of last drawn wages of petitioner restricted by Rs.8000/- have been taken into consideration for calculation of compensation. Accordingly, injury compensation is calculated as under:

1. 60% of last drawn wages of petitioner restricted by Rs.8,000/ = Rs.4800
2. 194.64 relevant factor

$$4800 \times 194.64 = 934272.$$

In view of above calculation petitioner Sh. Ram Dhari, s/o Sh. Ram Subhag is entitled to receive Rs.9,34,272 injury



compensation. Since, Respondent NO.2 did not deposit compensation as per section 4A of the Act which mandates Respondent to deposit compensation within 30 days from the date of accident or as soon as it falls due, as such as per Section 4A(3)(a), Respondent NO.2 is directed to pay 12% interest per annum on awarded amount from the date of accident till its realization. Accordingly, Respondent No.2, United India Insurance Co. Ltd. is directed to deposit Rs.9,34,272 (Rupees Nine Lakh Thirty Four Thousand Two Hundred Seventy Two Only) with demand draft in the favour of Employee's Compensation Commissioner within 30 days from the receipt of this Order failing which the same shall be recovered as land revenue.

8. Accordingly order is announced in the open court today. The copy of this order be given to the parties by Dasti for compliance.

11. In view of the aforesaid reasons, the position remains undisputed that neither any reply was filed by the appellant/insurance company to the claim petition nor any evidence was led to dispute the the relationship of employer and employee between the parties. Thus, the finding of facts rendered by the learned Commissioner does not pose any substantial question of law.

12. Hence, the present appeal is dismissed. Accordingly, the interim order dated 03.02.2016 is vacated and CM APPL.23200/2023 stands allowed. The balance amount of compensation lying deposited with the learned Commissioner, Employee's Compensation be released to the applicant/respondent no.1 along with the accrued interest, if any. All pending applications are also disposed of.

DHARMESH SHARMA, J.

MAY 06, 2025

Ch/Es