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

+ **FAO 102/2025**

SH ANTARYAMI DUBEY

.....Appellant

Through: Mr. Pinku Singh, Mr. Samindra
Kumar Tripathi, Advs. with
appellant in person

versus

SMT REKHA DEVI & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **17.04.2025**

1. The hearing is being conducted through hybrid mode.

CM APPL. 22300/2025 (Exemption), CM APPL. 22301/2025 (Exemption), CM APPL. 22303/2025 (Exemption)

2. Allowed, subject to all just exceptions.

3. The applications stand disposed of.

CM APPL. 22302/2025 (Delay of 88 days in re-filing)

4. For the reasons stated in the application, the present application is allowed and the delay of 88 days in re-filing the present appeal is condoned.

5. The application stands disposed of.

FAO 102/2025 and CM APPL. 22299/2025 (Stay)

6. The appellant has preferred this appeal under Section 30 of the Employee's Compensation Act, 1923 ['Act'], thereby assailing the impugned order/award dated 11.10.2024 passed by the learned Commissioner, Employee's Compensation, whereby the claim for compensation filed by the workman/employee viz., respondent No.1



was allowed and she was awarded a total compensation of ₹13,45,680/- alongwith simple interest @ 12% p.a. w.e.f. 30.10.2020 till the date of payment under Section 4A(3)(a) of the Act, besides imposing 30% of the compensation as penalty under Section 4A(3)(b) of the Act amounting to ₹4,03,704/- payable to the respondent No.1/claimant/injured.

7. No one appeared for the respondent No.1 despite sending advance notice.

8. However, having heard the learned counsel for the appellant and on perusal of the record, this Court has no hesitation in holding that the present appeal is bereft of any merits.

9. Suffice to state that the learned Commissioner, Employee's Compensation has rendered a categorical finding that the respondent No.1/claimant/injured was working in the factory run by the appellant as a helper deriving monthly wages of Rs. 8,000/- per month and on 30.10.2020, she was working on a machine when she was grievously injured resulting in amputation of her left hand upto the elbow.

10. During the course of enquiry/legal proceedings before the learned Commissioner, Employee's Compensation, an issue was framed as to whether there existed a relationship of employer and employee between the claimant and respondent. It would be pertinent to reproduce the cross-examination of the respondent No.1/claimant/injured by the AR of the respondent, which goes as under:-

"I am not aware the name of the factory where I was working. There were 07-08 workers employed in the factory. Out of 07-08 workers, I know the name of only two workers namely Sh. Santosh and Sh. Shubhash. Sh. Anteryami Dubey used to give the monthly salary to me. There were two Owners of the respondent firm. I know only 01 owner Sh. Anteryami Dubey. I had directly approach



the respondent for job. It is wrong to suggest that a partner of Sh. Anteryami Dubey used to give monthly salary to me. I have no documents to prove my employee/employer relationship with the respondent. It is wrong to suggest that I was not working with the management/ respondent. It is wrong to suggest that Sh. Antervami Dubey is not the owner of respondent firm and it is further wrong to suggest that he is also employed there. It is correct that I had sent a demand letter to the management through Labour Union. I do not know whether it was served upon the respondent or not. Vol. I do not have the tracking report. It is wrong to suggest that I have demanded the compensation in claim petition is wrong. It is wrong to suggest that I am deposing falsely."

11. During the course of the arguments before this Court, learned counsel for the appellant submitted that in fact there was a co-employer, namely one Sardarji who was not impleaded in the present matter and he urged that the liability to pay compensation to the appellant is joint and several, thereby co-existing with the co-employer i.e. the Sardarji.

12. Interestingly, in the written statement filed on behalf of the appellant during the course of the enquiry/legal proceedings before the Commissioner, Employee's Compensation, there was no *iota* of averment that there was any other person apart from the appellant who was the co-employer with regard to the work which was entrusted to the respondent No.1/claimant/injured. Be that as it may, if the appellant and the other person were running business in partnership, any of the partner can be made liable to pay compensation to the injured workman.

13. A careful perusal of the cross-examination of the respondent No.1/claimant/injured would show that there was no challenge that she was earning Rs. 8,000/- per month. It is manifest that the witness was able to vividly reveal the name of the co-workers who were also employed in the factory, and evidently she was injured during the



course of her employment with the appellant. The assessment of quantum of compensation has not been challenged by the appellant in any manner.

14. Learned Commissioner, Employee's Compensation has rather granted a lot of latitude to the appellant and imposed penalty only to the extent of 30% of the compensation. There are no other grounds raised by the appellant challenging the impugned award.

15. Accordingly, this Court is unable to find any illegality, perversity or incorrect approach adopted by the learned Commissioner, Employee's Compensation in passing the impugned award.

16. Hence the present appeal is dismissed in *limine*. The pending application is also disposed of.

DHARMESH SHARMA, J.

APRIL 17, 2025/sp/sa