



2026:DHC:2201



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

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+ **FAO 20/2018 & CM APPL. 1432/2018**

YOGESH SHARMA & ANR

.....Appellant

Through: Ms. Archana Gaur, Ms. Ridhika Gaur,
Advocates.

versus

GEETA @ JITU @ GITU

.....Respondent

Through: Mr. Utsav Jain, Advocate.

+ **FAO 23/2018, CM APPLs. 1919/2018 & 24047/2018**

GEETA@ GITU @ JITU

.....Appellant

Through: Mr. Utsav Jain, Advocate.

versus

YOGESH SHARMA AND ANR

.....Respondents

Through: Ms. Archana Gaur, Ms. Ridhika Gaur,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present set of appeals have been filed by the Management as well as the workman seeking to assail the award dated 31.10.2017(also mentioned as 06.11.2017) passed by the learned Commissioner, Employee's Compensation (District-East), Labour Department, Government of NCT of Delhi. While Management seeks setting aside of the award, the workman contends that finding on 'loss of earning capacity' needs to be revised upwardly and higher compensation is to be granted.



As common submissions have been addressed, both the appeals are taken up together for consideration and are being disposed of by way of a common judgment.

2. Briefly, the workman had preferred a claim application wherein it was claimed that she had been working with the respondent's firm on monthly wages of Rs.7,500/- since 24.07.2008 with the Management. It was claimed that the Management was running their business under the name of M/s *Sharma* Garments as well as under some other names and was operating from two addresses i.e., 7313, Guru Govind Singh Gali, Gandhi Nagar, Delhi-110031 and 46/2 Gali No.17, East Arjun Nagar, Delhi-110051. The workman was neither given any appointment letter nor was her presence marked in any attendance register. She was not even informed as to in which firm she had been appointed, however, the workman used to go to both the addresses. The respondents used to frequently change the name of the firm, which was never intimated to the workman. The Management was also working through one *Rajender Batra*, a senior employee who was working on piece rate basis.

The workman and other employees were working on the third floor of the building which had a lift facility being a multi-level building. However, the lift was not working properly and on 24.05.2013 at about 7.00 PM, when the workman used the lift, its chain broke and the lift fell while she and other employees were inside. The workman, who was already suffering from post-polio residual paralysis in her left lower limb, sustained injury on her right leg and suffered a fractured. The Management took her to a private hospital viz., *Usha Memorial Orthopedic Centre at Krishan Nagar, Delhi*. She was threatened not to raise any complaint. Though she was discharged



from the hospital on 27.05.2013, her treatment continued till 21.05.2014. When the workman asked for compensation, she was threatened again, on following which she made a complaint to the police authorities on 17.07.2014.

3. In the proceedings before learned Commissioner, the Management failed to appear and were proceeded *ex parte*. On a challenge made before this Court by W.P.(C) 7915/2015, this Court *vide* order dated 01.02.2017 set aside the *ex parte* award and remanded back the matter to the learned Commissioner for fresh consideration. *Vide* the impugned order, an award came to be passed in favour of the workman.

4. While assailing the impugned award, learned counsel for the Management primarily contended that the learned Commissioner erred in disregarding the testimony of *Rajinder Batra*, who was merely a tenant and, in his deposition, stated that the claimant was not an employee but used to come and meet some of the lady employees in his office. While denying the factum of any accident as alleged, reference was made to the testimony of the Management's witnesses, namely, *Ashwani Sharma* and *Yogesh Sharma*, who had stated that neither workman was ever employed with them nor the lift was ever operational.

In this regard, further reference was made to the testimony of one *Saurabh Kohli*, who stated that he was given the contract for installation of the lift, but the same was never made operational.

Lastly, it is contended that the workman had placed supporting alongwith her claim application wherein her age has been stated differently and the learned Commissioner erred in stating the age of the workman as 28 years. Even the Commissioner's reliance on disability certificate issued on



11.05.2016 was also doubted as the same indicated 90% disability of right lower limb whereas the injury was suffered on the right leg.

5. While opposing the above contentions made on behalf of the Management, learned counsel for the workman submitted that the Management's own witness, namely *Bhaskar Soni*, admitted that the salaries were paid in cash. It is further submitted that other witnesses also deposed that the salaries were paid to the workman only in cash. Moreover, workman also placed on record the printed white envelopes given from time to time mentioning the name of workman.

6. Before proceeding further, this Court would like to take note of the position in law as to the scope of Section 30 of the Employee's Compensation Act, 1923, it is indeed settled through a number of decisions that the scope of appeal under Section 30 is limited. Under the scheme of the Employee's Compensation Act, the Commissioner is the last authority on facts. Being a welfare legislation, the Parliament thought it fit to restrict appeal only to a substantial question of (CR: *Golla Rajanna & Ors. Vs. Divisional Manager & Anr.*¹).

7. Keeping the aforesaid limited scope in view, this court has examined the decision of the learned Commissioner.

8. Though it is contended on behalf of the Management that the learned Commissioner has disregarded the testimony of *Rajender Batra*, however, a reading of the same would reveal that he had not specifically depose that the workman was not employed with the Management. His deposition is completely silent on this aspect.

¹ (2017) 1 SCC 45



9. The workman was examined by the Medical Board of GTB Hospital which issued the disability certificate dated 11.05.2016 thereby certifying that the workman had suffered 90% permanent locomotor impairment in her right lower limb. It was further opined that the condition was non-progressive/not likely to improve. The opinion was rendered by Head of the Department of Orthopedics (UTMS & GTB Hospital), whereby it was certified that the workman had suffered injury to her right lower limb. It was further opined that the workman had pre-existing post-polio residual paralysis of her left lower limb and her disability of right limb was 49%. Dr *Puneet Mishra* as well as Dr *R. K. Sachdeva*, who had operated on the right knee of the workman were also examined. The workman suffers from 90% permanent disability in her right leg as certified by GTB Hospital and that the earlier reference to the left leg in the disability certificate was a clerical error later corrected. The learned Commissioner on consideration of the disability certificates determined the loss of earning capacity of the workman to the extent of 25%. Further, while accepting her age to be 28 years, granted compensation of Rs.3,89,508/-. A further sum of Rs.88,952/- was awarded towards penalty. The present appeal is however, restricted to the grant of compensation and not penalty.

10. Insofar as the employee/employer relationship is concerned, the learned Commissioner has held that it was the Management, who had signed the consent letter for the surgery of the workman. Further, the workman was taken to the hospital immediately after the accident and arrangements for her medical treatment were made by the Management. The learned Commissioner also took into account the consistent testimony of the workman, who deposed that she had been working with the respondents for



several years and had been shifted, along with other workers, to the premises where the accident occurred. Additionally, it was noticed from the testimony of the respondents' witnesses that wages in the establishment were paid in cash, which explained the absence of formal wage records.

11. Coming to the contentions relating to determination of age of the workman, it is also noted that though there are various documents on record indicating different ages of the workman, the learned Commissioner has considered the Aadhar card, as per which the age of the workman is 28 years. Thus, in these circumstances, it cannot be said that the exercise of jurisdiction by the learned Commissioner was either improper or unjust. The Management's challenge to the impugned award therefore fails.

12. The workman has also sought enhancement of compensation through her appeal. It is contended that loss of earning capacity ought to have been calculated @ 100%, as the workman was already suffering from pre-existing 90% disability in her right lower limb and had further sustained 49% permanent locomotor impairment in her right lower limb, owing to which the workman is not able to carry out any work.

13. The learned Commissioner assessed the loss of earning capacity to the extent of 25% as the workman did not elaborate on the nature of the work carried out by her. Considering that physical disability of the workman in both lower limbs stands established, one of which is caused by the accident in question, the loss of future earning capacity is re-assessed at 50%.

14. Accordingly, the matter is remanded back to the learned Commissioner for fresh computation of the compensation and its grant. The amounts deposited by the Management in the first round as well as present appeal with the Registry/Commissioner be released to the workman.



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15. The matter be listed before learned Commissioner on 30.03.2026.
16. The present appeals, along with pending applications, are disposed of in the above terms.
17. A copy of this judgment also be communicated to the learned Commissioner.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 16, 2026/pmc