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

\+   **<u>FAO No. 205/2016</u>**

%   **25th April, 2017**

RAJINDER @ SURINDER & ORS.   ..... Appellants
Through: Ms. Aruna Mehta, Advocate.

versus

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
..... Respondent
Through: Ms. Sunanda Nimisha, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

<u>VALMIKI J. MEHTA, J (ORAL)</u>

1. This first appeal is filed under Section 30 of the Employee's Compensation Act, 1923 (in short 'the Act') by the appellants/claimants against the order of the Employee's Compensation Commissioner dated 14.1.2016. Appellants/claimants are aggrieved by the impugned order dated 14.1.2016 on the ground that by the impugned order payment of interest has only been ordered from 21.7.2002 till 16.3.2005 i.e the date of deposit of compensation, instead of interest being granted till the actual date of payment and as is required by Section 4A of the Act.

2. In my opinion in fact, the entire impugned order dated 14.1.2016 is completely without jurisdiction and the appellants/claimants are in fact lucky even to get interest 12% per annum simple from 21.7.2002 till 16.3.2005 inasmuch as the claim application which has now been allowed by the impugned order dated 14.1.2016 is clearly barred by principle underlying the provision of Order II Rule 2 CPC. The reasons for the same are given hereinafter.

3. Appellants/claimants had earlier filed a claim petition and which was allowed by the Employee's Compensation Commissioner vide order dated 3.3.2005 awarding an amount of Rs. 3,34,065/-. Against this judgment dated 3.3.2005 a challenge was laid by the insurance company, respondent herein, but this challenge was not successful and the FAO No. 94/2005 was dismissed by a learned Single Judge of this Court vide judgment dated 17.8.2012. The order of the Employee's Compensation Commissioner dated 3.3.2005 awarding compensation to the appellants/claimants hence became final.

4. Indubitably, as per the earlier judgment dated 3.3.2005, the penalty of 50% was not granted to the claimants as per Section 4A of the Act and nor was any interest ordered to be paid. Though the judgment dated 3.3.2005 is not clear, counsel for the

appellants/claimants states that when by the judgment dated 3.3.2005 compensation of Rs. 3,34,065/- was awarded, the said amount did not include the penalty of 50% and interest at 12% per annum simple on account of non-compliance of Section 4A of the Act which requires the deposit of compensation on account of accident within a period of one month.

5. Once by the main judgment dated 3.3.2005 appellants/claimants were not awarded penalty of 50% and interest on the payable amount required by Section 4A of the Act, then it was for the appellants/claimants to file an appeal against the judgment dated 3.3.2005 seeking the penalty of 50% as also interest in terms of Section 4A of the Act. Appellants/claimants however did not do so and now appellants/claimants have again filed a fresh claim petition which has been allowed by the impugned judgment dated 14.1.2016 giving an amount of Rs.1,06,900/- to the appellants/claimants being interest at 12% per annum from the date of the accident being 21.7.2002 till the deposit of the compensation amount on 16.3.2005. It is therefore clear that the claim petition which has now been allowed by the impugned judgment dated 14.1.2016 was itself misconceived and in fact the Employee's Compensation Commissioner had in fact no power to again allow a fresh claim petition to be filed with respect to the claim

towards interest once interest was not granted as per the original judgment dated 3.3.2005 and which had become final. Appellants/claimants are therefore already very lucky in getting interest by the impugned judgment, although, no interest whatsoever could have been granted. Once interest could not have been granted by the impugned judgment there does not arise issue of any further interest being granted to the appellants/claimants from 16.3.2005 till the date of payment.

6. Dismissed.

APRIL 25, 2017/ib **VALMIKI J. MEHTA, J**