

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

+ **FAO No.481/2016 and C.M. No.36264/2016 (stay)**

% **25th October, 2017**

FUTURE GENERALI INDIA INSURANCE CO. LTD. Appellant

Through: Mr. Rajeev M. Roy, Advocate.

versus

ASHA DEVI & ORS. Respondents

**Through: Mr. Surender Chauhan,
Advocate for respondent No.3
with respondent no.3 in person.
Mr. Iftikhar Ahmed, Advocate
for respondent No.4.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? YES

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 30 of the Employee's Compensation Act, 1923 is filed by the appellant/insurance company impugning the judgment of Employee's Compensation Commissioner dated 28.7.2016 by which the Employee's Compensation Commissioner reviewed its earlier judgment dated 3.6.2016. As per the earlier judgment dated 3.6.2016 only the respondent no.1 in the

claim petition i.e M/s Ravi Tempo Transport Co., respondent no.3 in this appeal, was held liable. In terms of the subsequent judgment dated 28.7.2016 passed on an application for review filed under Section 114 CPC by M/s Ravi Tempo Transport Co., the Employee's Compensation Commissioner held the appellant/insurance company liable jointly and severally with M/s Ravi Tempo Transport Co.

2. Learned counsel for the appellant/insurance company has taken this Court through the provision of Rules 32 and 41 of the Workmen's Compensation Rules, 1924 and it is argued that the Employee's Compensation Commissioner has no power to review its judgment on merits and powers of the Employee's Compensation Commissioner is restricted only to corrections of clerical or arithmetical mistakes arising from any accidental slip or omission. Rules 32 and 41 of the Workmen's Compensation Rules read as under:-

“32. Judgment.-(1) The Commissioner, in passing orders, shall record concisely a judgment, his finding on each of the issues framed and his reasons for such finding.

(2) The Commissioner, at the time of signing and dating his judgment, shall pronounce, his decision, and thereafter no addition or alteration shall be made to the judgment other than the correction of a clerical or arithmetical mistake arising from any accidental slip or omission.

41. Certain provisions of Code of Civil Procedure, 1908, to apply.-Save as otherwise expressly provided in the Act or these Rules the following

provisions of the First Schedule to the Code of Civil Procedure, 1908, namely, those contained in Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII; and Order XXIII, Rules 1 and 2, shall apply to proceedings before Commissioners, in so far as they may be applicable thereto:

Provided that-

(a) for the purpose of facilitating the application of the said provisions the Commissioner may construe them with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before him;

(b) the Commissioner may, for sufficient reasons, proceed otherwise than in accordance with the said provisions if he is satisfied that the interests of the parties will not thereby be prejudiced.”

3. It is seen that Rule 41 of the Workmen’s Compensation Rules does not make applicable the provision of Order XLVII CPC read with Section 114 CPC to the proceedings before the Employee’s Compensation Commissioner although various other provisions of CPC have been made applicable. Power of review is a statutory power which has to be specifically conferred and there is no inherent power of review in face of the provisions of Rules 32 and 41 of the Workmen’s Compensation Rules. Rule 32 of the Workmen’s Compensation Rules in fact makes it clear that after signing of the judgment, no alteration can be made in the judgment except for correction of a clerical or arithmetical mistake arising from any accidental slip or omission i.e no fresh judgment can be passed dealing with the issues on merits. There is no clerical or arithmetical mistake

in this case because on merits the appellant/insurance company has been held liable by the review judgment dated 28.7.2016, and which judgment dated 28.7.2016 cannot fall under the heading of a clerical or arithmetical mistake. Accordingly, it is held that Employee's Compensation Commissioner has no power of review as such power is not conferred by Rule 41 of the Workmen's Compensation Rules and in fact Rule 32 of the Workmen's Compensation Rules restricts the power after passing the judgment only to make corrections on account of accidental slips or omissions and which thus will not include a right/power to change the judgment already passed by passing a fresh judgment on merits on a review petition.

4. Learned counsel for the respondent no.3 in this appeal and which was respondent no.1 in the court below states that liberty be granted to this respondent for now filing an appeal against the judgment dated 3.6.2016 which had not made the appellant/insurance company liable. It is argued that not only liberty be granted to file the appeal, the respondent no.3 M/s Ravi Tempo Transport Co. be granted the benefit of Section 14(1) of the Limitation Act, 1963 as this respondent remained under a legitimate and *bonafide* mistake on

account of review petition being entertained and thereafter allowed in terms of the impugned judgment dated 28.7.2016 passed by the Employee's Compensation Commissioner.

5. Accordingly, while allowing this appeal and setting aside the judgment of the Employee's Compensation Commissioner dated 28.7.2016, liberty is granted to the respondent no.3 herein to file an appeal against the judgment dated 3.6.2016, of course in accordance with law, and when such an appeal is filed, the provision of Section 14(1) of the Limitation Act be read liberally in favour of the respondent no.3 herein. Parties are left to bear their own costs.

OCTOBER 25, 2017
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VALMIKI J. MEHTA, J

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