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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO 50/2018, CM APPL. 16567/2020 (fresh by appellant seeking disposal of appeal) & CM APPL. 16568/2020 (exemption)

KAMLA DEVI & ORS Appellants

Through: Mr. Daksh Nain, Advocate.

versus

M/S THE ORIENTAL INSURANCE CO LTD & ANR Respondents

Through: Mr. A.K. Soni, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER
% **13.08.2020**

The hearing was conducted through video conferencing.

1. The appellants impugn the order dated 13.12.2017 passed by the learned Commissioner, Employees' Compensation, on the ground that it has been passed without adjudicating on the merits of the case. The appellants had earlier filed a withdrawal application, which was disallowed and the appeal was dismissed as not pressed.
2. The appellants' subsequent claim petition was dismissed on the ground that the earlier disposal of the claim petition constituted *res judicata*. The first one was disposed-off, albeit not on merits and without liberty to the claimants to file a fresh petition, therefore, the

subsequent claim petition was held not be maintainable.

3. In FAO 483/2018 a similar relief was sought, this court vide order dated 08.11.2019, had ordered *inter alia*:

“

2. *In the present matter also, the appellant who had preferred the claim case for compensation under Section 22 of Employees' Compensation Act against the respondents was advised by his counsel to first move an application for transfer and since no relief forthcame on that, make a request to press for withdrawal and liberty to file fresh case. The Commissioner, Employees' Compensation Act, the same officer who had handled the above-mentioned earlier cases – by cryptic order passed on 06.09.2017 allowed the prayer for withdrawal of the claim case and dismissed it accordingly but then proceeded to decline liberty by simply observing “No liberty given”.*

3. *The respondents have chosen not to appear in spite of notice of the appeal*

4. *Having heard the counsel for the appellant, this Court is of the view that an approach similar to the one adopted in the previous three other matters has to be followed since the order impugned in the appeal declining the liberty is cryptic and devoid of any reason and hence injudicious and consequently unsustainable. The impugned order is, thus, set aside.*

5. *The counsel for the appellant submits that since the application for withdrawal of the claim case was filed under some deficient legal advice, the appellant now being desirous to press the same claim case before the concerned forum for*

adjudication as per law, he may be permitted to withdraw the application for withdrawal of the case on which application, the impugned order was passed. Allowed accordingly. The said application shall be treated as withdrawal and dismissed accordingly.

6. In the consequence, the claim case of the appellant stands revived on the file of the Commissioner, Employees' Compensation, who is directed to proceed further in the matter in accordance with law. The parties are directed to appear before the said forum on 18th December, 2019.

... ”

4. The court is of the view that in view of the above, the withdrawal sought by the appellant/claimant should have been permitted. It would have been open to the claimants to pursue their case, as they may have been advised.
5. In any case, the proceedings before the learned Commissioner are under a socially beneficial legislation and the parties ought to be heard and the claim of the parties should be adjudicated on merits. It should not be, that because of the difficulty or constraints of counsel, as may be, that the parties should be rendered remediless, which is what has happened in the present case.
6. In the circumstances, the impugned order is set aside and the case is remanded to the learned Commissioner, Employees' Compensation, for a fresh decision on the merits of the case.
7. The appeal, along with pending applications, is disposed-off in the above terms.

8. The parties shall appear before the learned Commissioner, Employees' Compensation, on 05.10.2020
9. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J

AUGUST 13, 2020

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