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

+ **FAO 492/2017**

NEETA KUMARI

..... Appellant

Through: Mr.R.K.Nain and Mr.Chandan
Prajapati, Advocates

versus

M/S TATA AIG GENERAL INSURENANCE

CO LTD & ANR.

..... Respondents

Through: Ms.Vandana Kohlon and Mr.Rudra
Kahlon, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

24.03.2023

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MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present appeal filed under section 30 of the Employee's Compensation Act, 1923, (hereinafter, referred to as the 'EC Act'), the appellant has assailed judgment dated 10.08.2023 passed by the Commissioner Employee's Compensation in case no. WCD/211/NW/13 whereby the learned Commissioner dismissed the appellant's claim application seeking death compensation as well as an application seeking transfer of the case.

2. Facts in a nutshell are that, the husband of the appellant was employed by respondent No.2 as a driver on truck bearing no. HR-55Q-7145 and used to ply the truck from Delhi to Bangalore and vice versa. It was claimed that the last trip caused him a lot of stress and exertion which

resulted in his death on 04.09.2013. The appellant moved a claim petition for death compensation which was adjudicated in favour of the appellant by the learned Commissioner vide order dated 01.02.2016 wherein it was held that the cause of death was excessive stress and strain due to the employment hazard. The respondent No.1/Insurance Company challenged the said order by way of an appeal being FAO No. 171/2016. This Court vide a detailed order dated 16.05.2017 not only set aside the order passed by the Commissioner and remanded back the case to the learned Commissioner, but also directed that the claimant be allowed to lead evidence and the claim application be considered on merits. Apparently, the appellant filed an application seeking transfer of the claim petition. The Commissioner by way of impugned order not only dismissed the application seeking transfer of the case but also the claim petition.

3. I have heard the learned counsels for the parties and gone through the material which has been placed on record alongwith the appeal.

4. Notably, the claim petition was dismissed not on merits but on the ground that the appellant had sought transfer of the case. The relevant extract of the impugned order reads thus:

“10. In view of the above facts, I did not see any merit in the application filed on behalf of Claimant for transfer of the case to some other court. Accordingly, the application for transfer of the case is dismissed.

11. The Claim Petition is also dismissed as the Claimant does not want this court to decide the claim and the Secretary cum Labour Commissioner, Department of Labour has also

rejected the application of the Claimant for transfer of the case to some other court.”

5. Learned Commissioner while dismissing the appellant's claim petition noted that the Secretary cum Labour Commissioner, Department of Labour also rejected a similar application filed by the Claimant seeking transfer of the case to some other court.

6. It is thus apparent from the record that after dismissing the transfer application, learned Commissioner instead of proceeding to deal with the claim petition on merits and directing the claimant to lead evidence rather dismissed the claim petition itself on the very same day. In the considered opinion of this Court, the denial of an opportunity to lead evidence or even argue the case on merits has resulted in complete miscarriage of justice. Further, the impugned order was passed in disregard of the following directions passed by this Court on 16.05.2017:

‘In view of the above discussion, the impugned judgment dated 3.2.2016 is set aside. The matter is remanded back to the Employee's Compensation Commissioner to allow the respondent no.1 herein/claimant to lead evidence and the Employee's Compensation Commissioner thereafter shall decide the case as per the ratio and observations made in the present judgment and the ratios of the judgments of the Supreme Court in the cases as quoted above and the Employee's Compensation Commissioner must come to a finding as per evidence led which a reasonable man can believe that there exists such evidence and death having taken place of Sh. Tilak Raj on account of physical condition or

ailment or injuries caused arising out of and in the course of employment.'

7. Accordingly, the impugned order is set aside and the matter is remanded back to the concerned Commissioner to proceed in accordance with law, for which purpose the matter is directed to be listed before the Commissioner at the first instance on 14.04.2023.
8. Considering that the incident relates to the year 2013, learned Commissioner is requested to make an endeavour to conclude the proceedings expeditiously, preferably within a period of three months.
9. The appeal alongwith pending applications, if any is disposed of in the above terms.
10. The Registry shall communicate a copy of this order to the concerned Commissioner.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 25, 2023/ga