POWER OF EMPLOYEE'S COMPENSATION COMMISSIONER IN CONTEST OF RECALL OF EX-PARTE AWARD (EMPLOYEE'S COMPENSATION ACT 1923

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

SUBMITTED BY

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UNDER THE GUIDANCE

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BBD UNIVERSITY

Session 2022-2023

CERTIFICATE

This is to certify that the dissertation titled, "**POWER OF EMPLOYEE'S COMPENSATION COMMISSIONER IN CONTEST OF RECALL OF EX-PARTE AWARD (EMPLOYEE'S COMPENSATION ACT 1923"**is the work done by **SAJJAD HUSAIN** under my guidance and supervision for the partial fulfilment of the requirement for the degree of **MASTER OF LAWS** in the School of Legal Studies, Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her success in life.

Date: _____ **DR. NITESH KUMAR SRIVASTAV**

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I would also like to convey my thanks to all the **Library Staff** for their timely assistance to carry out the work and to all my friends who provided me with the necessary information that helped me through my work. My heartfelt love and gratitude to my parents and the rest of my family members, for you had always been there with overwhelming power and support at every point.

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LIST OF CASES

Case Laws which's finding and conclusion are empowering the Commissioner of Employee's Compensation to recall its own ex parte order and award:

LIST OF ABBREVIATIONS

EC Act	Employee's Compensation Act, 1923
WC Rule	Workmen's Compensation Rules, 1924
CPC	Code of Civil Procedure, 1908
AIR	All India Reporter
SCC	Supreme Court Case (Law Journal)
SCConline	Supreme Court Cases Online
All LJ	Allahabad Law Journal
ACJ	Accidents Claims Journal
SCR	Supreme Court Reports
SCCsup	Supreme Court Case supplementary
ILLJ	Indian Legal Journal
FLR	Indian Factories & Labour Reports

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LIST OF CASES

Srl	Party Names	Dt of Decision	By Hon'ble Court	Relevant para	Report in/Case No.
1	Satnam Verma Vs. Union of India	09.12.1984	Supreme Court	Para 7, 8, 9, and 10	AIR 1985 SC 294 & 1984 Supp (1)SCC 712
2	Grindlays Bank LTD Vs Central Government Industrial Tribunal &Ors	12.12.1980	Supreme Court	Para Second Third Fourth And five	1981 AIR 606, 1981 SCR (2) 341
3	United India Insurance Co. Ltd. Vs. Workmen's Compensation	17.01.1996	Allahabad	14	1997 ACJ 1028
4	Syndet (India) Private Ltd Vs. Presiding Officer	25.01.2005	Allahabad	3	2005 (2) ESC 1239
5	Raj Bahadur Vs. Presiding Officer	08.01.2010	Allahabad	first , Second and third	Wrt - No. 575 of 2010
6	M/s Universal Cylinders Limited Vs. The Presiding Officer	31.01.2020	Allahabad	Last page	Writ C No. 15333 of 2019
7	Kolandhayee Vs. The Commissioner Labor (Commissioner Workmen's Compensation Act)	19.04.2010	Madras	Last page	W.A. No. 2505 of 2001

8	A.V. Varghese Vs. N.K. Kumaran	10.08.2011	Kerala	4 and 5	WP (C) No. 14248 of 2009

Case Laws which's finding and conclusion are not empowering the Commissioner of Employee's Compensation to recall its own ex parte order and award

Srl	Party Names	Dt of Decision	By Hon'ble Court	Relevant para	Report in/Case No.
1	Marshal Securities Vs. The Presiding Officer Labour Court (2) UP Kanpur and 2 others	13.09.2006	Allahabad High Court	31 and 34	Writ – C No. 33855 of 2006
2	Mohd. Ikram & Another Vs. Dy. Labour Commissioner, U.P. Saharanpur and others	07.05.2013	Allahabad High Court	6	Civil Misc Writ Petition No. 15504 of 2011
3	Balaji Stone Crusher Throu, Partner Kiran Saini and other connected matter Vs. State of UP throu Geology and Mines and Ors	02.08.2022	Allahabad High Court, Lucknow	11	Writ – C No. 7606 of 2019
4	Raman Agnihotri Vs. Commissioner, Workmen's Compensation, Kanpur and others	28.11.2008	Allahabad High Court	21, 25	Civil Misc. Writ Petition No. 61531 of 2008
5	Mayan Vs. Mustafa and another	08.11.2021	Supreme Court of India	2	Civil Appeal No. 6614 of 2021
6	Sangam Tape Co. Vs. Hans Raj	27.09.2004	Supreme Court of India	6, 7, 8, 12	Civil Appeal No. 2064 of 2002
7	Nirmla and Another Vs.	25.05.2022	Allahabad High Court Lucknow	1, 2, 3 and 4	Writ-C No. 2793 of 2022

	State of Uttar Pradesh and others		bench Lucknow		
8	Nimla and Another Vs. State of UP & Others	22.12.2022 & 10.01.2023	Allahabad High Court Lucknow bench Lucknow	1 and 2	Writ – C No. 9224 of 2022

CHAPTER -1

1.1 Introduction

That the Commissioner of Employee's Compensation Act, 1923, has power to recall its own order ex – parte order, in support of said statement I would like to refer the section 23 power of Commissioner under the Employee's Compensation Act, 1923 is quoted below "23. Powers and procedure of Commissioners. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, [and the Commissioner shall be deemed to be a Civil Court for all the purposes of [section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)]].[1]" section 23 is provided that the Commissioner of Employee's Compensation, Act, 1923 shall be deemed to be a Civil Court for all the purposes, that is why power of recall of ex parte order is also vested in his power, and also Workmen's Compensation Rules 1924's proviso of Rule 41 is provided that the Court of Employee's Compensation Commissioner is having power of Code of Civil Procedure Order 9 Rule 13 and 15 to 30, Rule 41 of Workmen's Compensation Rules, 1924 is quoted below, "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.[2]" the Workmen's Compensation Rules, 1924, Rule 41 is providing the power of Code of Civil Procedure, 1908, Order 9 Rule 13 and 15 to 30, same is reproduce here as under "Order 9 Rule 13, Setting aside decree ex parte against defendants. — In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit: Provided that where the decree is of such a nature that it cannot be set aside as against such defendant

[1] Employee's Compensation Act, 1923 42nd Edition, 2022 p-54 published by EBC
[2] Workmen's Compensation Rules, 1924 42nd Edition, 2022 p-102 published by EBC

only it may be set aside as against all or any of the other defendants also: [Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.] 2[Explanation. Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.[3]]" as per section 23 of Employee's Compensation Act, 1923 and Rule 41 of Workmen's Compensation Rules, 1924 and from the plain reading of the Order 9 and Rule 13 of Code of Civil Procedure, 1908, it is crystal clear that the Commissioner of Employee's / Workmen's Compensation is having to recall its ex-parte order, the Hon'ble Apex Court as well as various Hon'ble High Courts has given finding that the Commissioner of Employee's / Workmen's Compensation is having to recall its ex-parte order list of the cases, petition number, date of order and relevant paragraphs are as under

Srl	Party Names	Dt of Decision	By Hon'ble Court	Relevant para	Report in/Case No.
1	Satnam Verma Vs. Union of India	09.12.1984	Supreme Court	Para 7, 8, 9, and 10	AIR 1985 SC 294 & 1984 Supp (1)SCC 712
2	Grindlays Bank LTD Vs Central Government Industrial Tribunal & Ors	12.12.1980	Supreme Court	Para Second Third Fourth And five	1981 AIR 606, 1981 SCR (2) 341
3	United India Insurance Co. Ltd. Vs. Workmen's Compensation	17.01.1996	Allahabad	14	1997 ACJ 1028
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7	Kolandhayee Vs.	19.04.2010	Madras	Last page	W.A. No. 2505 of 2001

[3] Order 9 Rule 13 of CPC, 1908, Edition 2018 Ekta Law Agency p-131

	The Commissioner Labor (Commissioner Workmen's Compensation Act)				
8	A.V. Varghese Vs. N.K. Kumaran	10.08.2011	Kerala	4 and 5	WP (C) No. 14248 of 2009

That the various Hon'ble Courts has given finding that the (Workmen's / Employee's Compensation Commissioner has no power to recall its own ex parte order, they have refer the section 6 of Employee's Compensation Act, 1923 in the said section there no power of review has been given by the Act and in Rule 32 (2) of Workmen's Compensation Rules, 1924 is providing that the Commissioner has no power to alter the judgement after its pronouncement only clerical or arithmetical mistake is allowed, Rule 32 (2) of Workmen's Compensation Rules, 1924 is reproduced here as under , "32 (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.[4]" on the basis of the Rule 32 (2) of Workmen's Compensation Rules, 1924 the various Hon'ble Court has given finding in the flowing judgements that the Commissioner has no power to recall its own ex-parte order, the table of the judgment is as under

Srl	Party Names	Dt of Decision	By Hon'ble Court	Relevant para	Report in/Case No.
1	Marshal Securities Vs. The Presiding Officer Labour Court (2) UP Kanpur and 2 others	13.09.2006	Allahabad High Court	31 and 34	Writ – C No. 33855 of 2006
2	Mohd. Ikram & Another Vs. Dy. Labour Commissioner, U.P. Saharanpur and others	07.05.2013	Allahabad High Court	6	Civil Misc Writ Petition No. 15504 of 2011
3	Balaji Stone Crusher Throu, Partner Kiran Saini and other connected matter Vs. State of UP throu Geology and Mines and Ors	02.08.2022	Allahabad High Court, Lucknow	11	Writ – C No. 7606 of 2019

[4] Workmen's Compensation Rules 1924, Rules 32(2)

4	Raman Agnihotri Vs. Commissioner, Workmen's Compensation, Kanpur and others	28.11.2008	Allahabad High Court	21, 25	Civil Misc. Writ Petition No. 61531 of 2008
5	Mayan Vs. Mustafa and another	08.11.2021	Supreme Court of India	2	Civil Appeal No. 6614 of 2021
6	Sangam Tape Co. Vs. Hans Raj	27.09.2004	Supreme Court of India	6, 7, 8, 12	Civil Appeal No. 2064 of 2002
7	Nirmla and Another Vs. State of Uttar Pradesh and others	25.05.2022	Allahabad High Court Lucknow bench Lucknow	1, 2, 3 and 4	Writ-C No. 2793 of 2022
8	Nimla and Another Vs. State of UP & Others	22.12.2022 & 10.01.2023	Allahabad High Court Lucknow bench Lucknow	1 and 2	Writ – C No. 9224 of 2022

Judgement of Hon'ble High of Allahabad in Case of Mohd. Ikram & Another vs Dy. Labour Commissioner U.P. decided on 7 May, 2013 is per incuriam (Per incuriam word come in English From Latin meaning is "through lack of case") meaning thereby the Hon'ble Judge oversight and without considering all the relevant facts and precedent of law which were earlier decided in the proceeding of law, the Hon'ble Judge in case of Mohd. Ikram & Another Vs. Dy. Labour Commissioner U.P., Marshal Securities Vs. The Presiding Officer Labour Court (2) UP Kanpur and 2 others, Balaji Stone Crusher Throu, Partner Kiran Saini and other connected matter Vs. State of UP throu Geology and Mines and Ors, Raman Agnihotri Vs. Commissioner, Workmen's Compensation, Kanpur and others, Mayan Vs. Mustafa and another, Sangam Tape Co. Vs. Hans Raj, Nirmla and Another Vs. State of Uttar Pradesh and others most of the judgement (supra) is recent judgement of 2021 and 22 and of old up to 2000, has committed a manifest of error not considering the law of precedent in Case of Grindlays Bank LTD Vs. Central Government Industrial Tribunal & Ors Judgement Dt. 12.12.1980 reported1981 AIR 606, 1981 SCR (2) 341 and In Case of Satnam Verma Vs. Union of India and various other judgements of the Hon'ble Apex have not been considered and other judgements of the Hon'ble Allahabad High Court have not been considered therefore the judgement (supra) are per incuriam as per As per Legal Service India[5]Through carelessness, through inadvertence. 'Per Incuriam' means 'through want of care'. A decision of the Court which are mistaken. A decision of the Court is not a binding precedent if given

[5] https://www.legalserviceindia.com/legal/article-6684-an-analysis-of-concept-of-per-incuriam.html#:~:text=Through%20carelessness%2C%20through%20inadvertence.,the%20relevant%20authorities%2C%20or%20statutes.

Per Incuriam, i.e. without the Court's attention having been drawn to the relevant authorities, or statutes, in view of the above the Employee's / Workmen Compensation Commissioner has power to recall its own ex parte order, accordingly I am of the view that the Employee's / Workmen Compensation Commissioner has power to recall its own ex parte order / award.

1.2 Objective

- To identify the power of Commissioner under the Employee's Compensation Act 1923, and Wrokmen's Compensation Rule 1924, Act and Rules are conflicting to each other, as it is important to mention here that the Employee's Compensation Act 1923 section 23 is empowering to the Commissioner for all power as a power vested in Civil Court, the Court of Civil Court having each types of power like review, recall, adding and altering, modifying the judgment, but the in the Employee's Compensation Act 1923's rule of 1924 of Ruel 32(2) is debarring the Commissioner says that the after signed of the judgement, the Commissioner has no power to review, recall, add, edit, alter and modifying the order, and Wrokmen's Compensation Rule 1924, Rule 41 is empowering the Commissioner again and rule is says that the Commissioner is having power of Code of Civil Procedure, 1908, the Order 9 Rule 13 is empowering the Commissioner for setting aside the judgement, order and award passed as ex-parte, there is conflict between Rules and Act, and on the basis of said Act and Rule several Hon'ble Court has passed the conflicting judgement which are liable to be discussed and required to find out the correct finding and reach to intension of our legislature and also advice to the Legislature and department of Law for correction and reform of difficulties that is may aim and objective of research
- A Study of relevant provision of Act and Rule and case Laws which are conflicting to each other and try to give suggestion to our Legislature by pointing out that the particular and section and sub-section is liable to be omitted and reformed and corrected as amended in such manner.
- Study on Power of Employee's Compensation Act 1923 & Rule 1924 Commissioner for recalling the ex-parte award That the Employee's Compensation Act 1923 is very much silent on the point of review and recall, Rule 32(2) is providing that the Commissioner has no power to recall his own ex parte order, only Commissioner can do clerical and arithmetical error no power of actual review and recall is vested in the power of Commissioner but Workmen's Compensation Rule 1924, Rule 41 is providing that the

Commissioner of Employee's Compensation Act, 1923, having power of Civil Court and Order 9 Rule 13 of Code of Civil Procedure, 1908 applied, therefore rule 41 is providing them for recalling of ex parte order/award passed by the Commissioner of Employees Compensation Act 1923, the provision of Recall and Actual Review as provided in Code of Civil Procedure, 1908, the legislature has not inducted or introduced in Employee's Compensation Act 1923 therefore in deciding / in proceeding of the case of claim learned judges are very much differing opinion that the Employee's Compensation Commissioner has no power to recall its own order either on merit or on ex parte and some of learned judges are delivering judgement on the basis of the Rule, holding that that the Employee's Compensation Commissioner has the power to recall its o wn order, and some of the Hon'ble Court are in opinion that the Commissioner of Employee's Compensation Act, 1923 has no power to recall its own order either on merit or on ex-parte, Hon'ble Court has given different – different judgements / orders, most of the orders of the learned judges are per incuriam, finding are bad in the eye of law, and also against the precedent which are earlier pronounced by the other Hon'ble Court, finding of orders are deferring to one other, therefore is liable to discuss here in detail and find the problem and solution to the same.

1.3 Hypothesis

Power of Employee's Compensation of Commissioner to recall of Ex-Parte Award under the Employee's Compensation Act 1923 and Workmen's Compensation Rule 1924

1.4 Research Methodology

In the research under the doctorial research and source of collection of data mainly through secondary data, from the Act i.e. Employees Compensation Act, A1923, and Rules i.e. Workmen's Compensation Rules, 1924, and scrutiny of judgement and order passed by the Hon'ble Courts, by the referring the provision of Employee's Compensation Act, 1923 and Workmen's Compensation Rules, 1924, the provision of 23 Employee's Compensation Act, 1923 and Workmen's Compensation Rules, 1924 Rule 32(2) and 41 are conflicting and Judgement of Hon'ble High of Allahabad in Case of Mohd. Ikram & Another vs Dy. Labour Commissioner U.P. decided on 7 May, 2013 is per incuriam (Per incuriam word come in English From Latin meaning is "through lack of case") meaning thereby the Hon'ble Judge oversight and without considering all the relevant facts and precedent of law which were earlier decided in the proceeding of law, the Hon'ble Judge

in case of Mohd. Ikram & Another Vs. Dy. Labour Commissioner U.P., Marshal Securities Vs. The Presiding Officer Labour Court (2) UP Kanpur and 2 others, Balaji Stone Crusher Throu, Partner Kiran Saini and other connected matter Vs. State of UP throu Geology and Mines and Ors, Raman Agnihotri Vs. Commissioner, Workmen's Compensation, Kanpur and others, Mayan Vs. Mustafa and another, Sangam Tape Co. Vs. Hans Raj, Nirmla and Another Vs. State of Uttar Pradesh and others most of the judgement (supra) is recent judgement of 2021 and 22 and of old up to 2000, has committed a manifest of error not considering the law of precedent in Case of Grindlays Bank LTD Vs. Central Government Industrial Tribunal & Ors Judgement Dt. 12.12.1980 reported1981 AIR 606, 1981 SCR (2) 341 and In Case of Satnam Verma Vs. Union of India and various other judgements of the Hon'ble Apex have not been considered and other judgements of the Hon'ble Allahabad High Court have not been considered therefore the judgement (supra) are per incuriam as per As per Legal Service India[6]Through carelessness, through inadvertence. 'Per Incuriam' means 'through want of care'. A decision of the Court which are mistaken. A decision of the Court is not a binding precedent if given Per Incuriam, i.e. without the Court's attention having been drawn to the relevant authorities, or statutes, in view of the above the Employee's / Workmen Compensation Commissioner has power to recall its own ex parte order, accordingly I am of the view that the Employee's / Workmen Compensation Commissioner has power to recall its own ex parte order / award.

1.5 Research Question

1. Whether Employee's Compensation of Commissioner having power to Recall Ex-Parte Order under Employee's Compensation Act 1923 and Workmen's Compensation Rule 1924 ?
2. Whether review and recall is permissible under the (Employee's Compensation Act 1923)
3. Whether review and recall is permissible under the (Workmen's Compensation Rule 1924)

1.6 Review of Literature

Books.

1. Labour and Industrial Law, Pillai, 14th Edition, 2012, ALJ publication. This book is very useful for me to do research work it contain some case law in this book they explain in a detail way with explanation, section 23. Powers and procedure of Commissioners. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, [and the Commissioner shall be deemed to

[6] https://www.legalserviceindia.com/legal/article-6684-an-analysis-of-concept-of-per-incuriam.html#:~:text=Through%20carelessness%2C%20through%20inadvertence.,the%20relevant%20authorities%2C%20or%20statutes.

be a Civil Court for all the purposes of [section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)]].[7]" and Rule "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.[8]" and Workmen's Compensation Rules, 1924 is reproduce here under "32 (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.[9]" are taken from the book, for the purpose to explaining the power of Commissioner of Employee's Compensation Act, 1923 and Workmen's Compensation Rules, 1924, also for the purpose of testing the rule 32(2) of Workmen's Compensation Rules, 1924, which are contradictory to the Rule 41 of the Employee's Compensation Act, 1923 and also contrary to section 23 of the Employee's Compensation Act, 1923, in one section 32(2) of the Workmen's Compensation Rules 1924 is providing that the Commissioner of Employee's Compensation Act have no power after pronouncing of the judgement, may add and correct for clerical and arithmetical word except these have no power to review and recall its own order, in fact section 23 of Employee's Compensation Commissioner has all the powers of civil court in exercising of power of the Act and also the Rule 41 of Workmen's Compensation Rules 1924 is proving that the Commissioner has all the power of Code of Civil Procedure, 1908, specially the power of order 9 rule 13 of CPC, therefore 32(2) of Rule Workmen's Compensation Rules, 1924 is liable to be tested in accordance with law.

2. Employee's Compensation Act 1923 and Workmen's Compensation Rule 1924 (Bare Act) 42 Edition, 2022 Amended up to Act 11 of 2017 and as of 30.12.2021 Published by Eastern Book Company, 34-A, Lalbagh Lucknow from this Book, section 6 of review, and power of Commissioner under the Act, section 23 all the power Commissioner is having as exercising of power of civil Court, Rule 32 (2) of the rule is conflicting to the rule 41 and in fact Rules 41 is providing the power of

[7] Employee's Compensation Act, 1923 42nd Edition, 2022 p-54 published by EBC
[8] Workmen's Compensation Rules, 1924 42nd Edition, 2022 p-102 published by EBC
[9] Workmen's Compensation Rules 1924, Rules 32(2)

employee's Compensation Commissioner to recall its ex parte order as power vested in Commissioner under order 9 rule 13 Code of Civil Procedure, 1908, contradiction is required to be tested and various aspect and prospect has been discussed several judgements are per incuriam which are liable to be tested with the Act and Rules, and to obtain correct finding for fulfilling the values correctness after doing due process of law, in accordance with law as established by law of natural justice in the interest of justice.

Tentative Chapters

Chapter – 1 Synopsis

1.1 Introduction
1.2 Objective
1.3 Hypothesis
1.4 Research Methodology
1.5 Research Question
1.6 Review of Literature

Chapter – 2 Historical Development of the Employee's Compensation Act

2.1. Introduction
2.2. History of Workmen Compensation Act 1923
2.3. History of Workmen Compensation Rule,s 1924
2.4. Law Commission of India Report No. 61 of Report 1974 of Workmen's Compensation Act, 1923 and Workmen's Compensation Rules, 1924
2.4.1 Law Commission of India Report No. 62nd of Report 1974 of Workmen's Compensation Act, 1923 and Workmen's Compensation Rules, 1924
2.4.2 Workmen's Compensation Act, 1923 amended as Employees Compensation Commissioner Act, 1923
2.5. Delay in Legislation for Workmen's Compensation
2.6. Compensation for Employees in Ancient India
2.7.Compensation for Employees in Mugal period (Medieval) India
2.8.1 Compensation and Wages under the A'in-i Akbari

Chapter – 5 Case Laws

5.1 Introduction

5.2 Table of Cases on the point of Employee's Compensation Act, 1923, the Commissioner has power to recall Ex- Parte Order

5.3 Table of Cases, which are not giving power to Commissioner of Employee's Compensation Act, 1923, with regard to recall of ex-parte order

5.4 Satnam Verma Vs. Union of India (UoI) decided on 19 October 1984 Supreme Court finding recall of ex parte order and award with regard to power of Employee's Compensation of Commissioner

5.4.1 Satnam Verma Vs. Union of India (UoI) para 6, 7, 8, 9 and 10 reproduced

5.5 Judgement of Apex Court (Supreme Court of India) In Case of Grindlays Bank LTD Vs. Central Government Industrial Tribunal & Ors

5.6 Judgement of Hon'ble High Court Allahabad In Case of United India Insurance Co. Ltd Vs. Workmen'S Compensation date of Judgement 17.01.1996 1997 (ACJ 1028

5.7 Judgement of Hon'ble High Court Allahabad In Case of Syndent (India) Private Limited Vs. Presiding Officer, Industrial Dt of Judgement 25.02.2005 2205 (2) ESC 1239

5.8 Judgement of Hon'ble High Court Allahabad In Case In Case of Raj Bahadur Vs. Presiding Officer, Labour Dt of Judgement 08.01.2010 Writ C No. 575 of 2010

5.9 Judgement of Hon'ble High Court Allahabad In Case of M/S Universal Cylinders Limited Vs. The Presiding Officer, Labour Dt of Judgement 13.01.2020 Writ C No. 15333 of 2019

5.10 Judgement of Hon'ble High Court Madras In Case of Kolandhayee Vs. The Deputy Commissioner of Labour Dt of Judgement 19.04.2010 W.A. No. 2505 of 2001

5.11 Judgement of Hon'ble High Court Madras In Case of A.V. Varghese Vs. N.K. Kumaran Dt of Judgement 10.08.2011 Writ C No. 14248 of 2009 (A)

5.12 Judgment of Hon'ble High Court in Civil Misc Writ Petiton No. 33855 of 2006 in case of Marshal Securities vs. State of UP and others judgement and order dt. 13.09.2006

CHAPTER -2

HISTORICAL DEVELOPMENT OF EMPLOYEE'S COMPENSATION ACT

2.1 Introduction

According to the "The Fatal Accident Act, 1855[10], the employer must take responsibility for its workmen, before the enactment of the Act, workmen are facing several types of trouble and working in the unsafe zone, the employers are not paying attention to the workmen, and workmen were working under the hazardous zone, and the incident has been taken places in the entire country as well as across the world, therefore in India "The Fatal Accident Act, 1855" has been enacted, the Act cover to major accident or fatal road accident, therefore requires for a new law for compensation for the workmen and complete code in the name and style "The Workmen Compensation Act, 1923" vide Act No. 8 of 1923 on 5th March 1923 has been come into force and cover the workmen needs including safety, social and economic as well as life security.

2.2 History of Workmen Compensation Act 1923

That British-India made the Act "Workmen's Compensation Act 1923" and delayed framed its rule as Workmen's Compensation Rules, 1924, in Act 1923 no wide scope and Rule, The earlier Act i.e. "The Fatal Accident Act, 1855" has been introduced and in The Fatal Accident Act, 1855 having very limited scope and on very limited point i.e. fatal injuries identified therefore Workmen's Compensation Act 1923 and it's Rule 1924 has been framed and vide scope has been described, Act has been framed but no power of actual review and recall has been assigned in the hand of Workmen's Compensation Commissioner, but in the Rule Power has been assigned but in very short, that is why learned judges have given interpretation of Act and Rule as well, before the Workmen's Compensation Act, 1923 no act framed which may fulfil the grievances of the aggrieved persons, that is British – India has framed the law known as Workmen's Compensation Act 1923.

2.3 History of Workmen Compensation Rule,s 1924

That India has no good Act and Rule with regard to compensation for workmen and employees to cover and give benefit to all aggrieved persons equally, either to claimants or defendants pre Work Compensation Act 1923 and Rule 1924 Only India has "The Fatal Accident Act 1855" from the "The Fatal Accident Act 1855" no substantial justice meet out therefore in pre-independent Workmen Compensation Act 1923 and Rule 1924 has been framed "in the exercise of the power conferred by section 32 of the Workmen's Act, 1923 (VII of

[10] The Fatal Accident Act, 1855

1923), "the Governor-General-in-Council is pleased to make the following rules: Government of India, Department of Industries and Labour, notification No. L-1182, dt. 26.06.1024[11]"

2.4 Law Commission of India Report No. 61 of Report 1974 of Workmen's Compensation Act, 1923 and Workmen's Compensation Rules, 1924

Regarding the smooth and easy functioning of the Employees Commissioner Government of India has handed over the matter to Law Commission of India and due to lapse of time and the development of the nature of work and sustained injuries by the workers therefore entire Act has been taken into consideration by the Law Commission of India, and law Commission of India has prepared the report but due to lacks of less reformation report not become final as letter of minister is quoted below

'A' Wing, 7th Floor,
Shastri Bhawan,
New Delhi-1.
October 15, 1974

Hon'ble Shri H.R. Gokhale Minister of Law, Justice and Company Affairs, Government of India New Delhi

I have great pleasure in forwarding herewith the 62nd Report of the Commission on the Workmen's Compensation Act, 1923. The circumstances in which the subject was undertaken for study are dealt with in the opening paragraph of the Report.

Having regard to the nature of the subject and its importance, the Commission first made a preliminary study of the subject, and framed a Questionnaire in order to elicit views. This Questionnaire was sent to the Ministries concerned, the State Governments, the High Courts, Bar Associations, and other interested persons and bodies, including associations of employers and workmen. The replies received in response to this Questionnaire were then duly considered by the Commission, and a draft Report on the subject was prepared by the Member-Secretary, Shri Bakshi, and discussed by the Commission at length. After discussion, the Report was finalised.

However, the final draft, as approved, was being typed and the typing work could not be completed before the 1st of October, 1974, when the Commission was re-constituted with the addition of Mr. B.C. Mitra. That is why, Mr. Mitra has not signed the Report.

Incidentally, I may mention that this Report is the first Report of the present Commission since its reconstitution.

With warm personal regards,[12]

[11] Employee's Compensation Act, 1923 along with Workmen's Compensation Rules, 1924 page 93 EBC 42nd Edition, 2022
[12] www.lawcommission.com

Due to the failure of the first report regarding the reformation and rectification of the Workmen's Compensation Act 1923 and Rules, 1924, the Government of India has initiated and recommended its second report, and approved by the majority members for its second law commission report, in pursuance of Law Commission of India Report amendment proceeding has been adopted to the same.

2.4.1 Law Commission of India Report No. 62nd of Report 1974 of Workmen's Compensation Act, 1923 and Workmen's Compensation Rules, 1924

That of 62nd Law Commission Report 1974 and Law Commission Report No.134 1989 amendment has been made, due to lapse of time several provisions become inactive and required for reformed and amended as the Law Commission of India has given in its report and recommendation, Law Commission of 1.4. paragraphs is quoted below "1.4. Need for revision of the Act. It is hardly necessary to emphasise the need for revision of the Act. There have been far-reaching developments in the field of social security and industrial relations in India since the Act was passed, and it is obviously desirable that this beneficial piece of social legislation should be reviewed in the context of those developments. The Directive Principles in the Constitution[1], to which we have briefly referred[2], also lay emphasis, in particular, on the need to protect the health and strength of workers, the need to make effective provision for public assistance in cases of unemployment, sickness and disablement, and oil endeavours to secure to all workers decent conditions of work and on ensuring a decent standard of life. It is not often realised that the provision for dependants in the Workmen's Compensation Act is specially intended to avoid want and penury, and is of direct relevance with reference to these directive principles. The concept of equality, which is one of the basic principles of the Constitution, has also provided inspiration for a revision of provisions resting on discrimination."[13] That the 134th Report of 1989 1A.14 has reproduced here us under "1A.14. Gist of the operative provisions. We shall now have a look at the operative provisions of the Workmen's Compensation Act. Under the Act, if personal injury is caused to a workman by an accident arising out of, and, in the course of his employment, his employer shall be liable to pay compensation irrespective of fault, in accordance with the provisions of Chapter 2 of the Act.[1] This expression "workman" is defined so as to include not all employees, but only a limited class. The liability of the employer to pay compensation is, under this provision, excluded in the case of certain minor injuries; and there is no liability for an injury caused by an accident directly attributable to the workman being under the influence of drink or drugs or to the wilful disobedience of orders and rules by the workman, or to the wilful removal or disregard by the workman of safety devices. Certain diseases contracted in an employment are also regarded as "injuries caused by accident", for the purpose of the Act. The liability arising under the Act cannot be excluded by contract."[14]

[13] Law Commission of India Report of 134th of 1989 1.4
[14] Law Commission of India Report of 134th of 1989 para 1A.14

2.5 Workmen's Compensation Act, 1923 amended as Employees Compensation Commissioner Act, 1923

That the Bill has been introduce by the Ministry of Law and Justice (Legislative Department) New Delhi, the 23rd December of 2009, the following Act f Parliament received the assent of President on the 22nd December, 2009 and is hereby published for general information "THE WORKMEN'S COMPENSATION (AMENDMENT) ACT, 2009 NO. 45 OF 2009 dated 22nd December, 2009, in the amendment 10 amendment has made in first section 1 (1) This Act may be call the Workmen's Compensation (Amendment) Act, 2009 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint 2. In the long title to the Workmen's Compensation Act, 1923 (hereinafter referred to as the principal Act) for the word "Workmen", the word "Employees" shall be substituted. 3. In the principal Act, in the preamble, for the word "workmen" the word "employees" shall be substituted. 4. In section 1 of the principal Act, in sub-section (1), for the word "Workmen's" the Word "employee's" shall be substituted.[15]

2.6 Delay in Legislation for Workmen's Compensation

That the labour work is always in our nation even in past, present and also in future are very painful, the, the most of the nation have made the law with regard to the compensation to labour class, but India is more in delayed, and law, there many reasons one of them that the India is the under control of British that is why most of the labour are not protected, but due to huge demand of Indian Workmen's Compensation Act 1923 has been framed, in very delayed before this Act there is not act for compensation for the employee's how the law with regard to compensation is delayed and framed only in 1923.

2.7 Compensation for Employees in Ancient India

That before the independence of India, in India mainly decisions were made under Ved and Pooran and local laws were made by the present ruler, there were no specific law to run and govern by the society except the law of religion, most of the Administrators were administering their State and region by the religious laws, there not specified any laws except to natural and spot justice looking to the incident.

2.8 Compensation for Employees in Mugal period (Medieval) India

A notable representative of Brahmanical orthodoxy, Tulsidas (fl.1570), author of a very popular version of the religious epic *Ramcharitmanas*, noted as an astonishing phenomenon of his day that "low-caste people such as oilmen, potters, untouchables (*svapachas*), fishermen, watchmen, and distillers simply shave their heads and turn into mendicants, at the loss of their wife or household goods". Their one act of defiance led to others. They tended to form part of a religious movement, now often called Popular Monotheism, which, rejecting both Hinduism and Islam, India's two major religions, preached an unalloyed faith in one God, abjuring all

[15] The workmen's Compensation (amendment) Act, 2009 (the Gazette of India Extraordinary part II-

ritual and the constraints of the caste system. Apart from the cloth printer, Namdev (c.1400) of Maharashtra, a major figure in this movement was Kabir, a weaver from the city of Banaras (Varanasi) in Uttar Pradesh, who lived around 1500.[16]

2.8.1 Compensation and Wages under the A'in-i Akbari

These workshops are described in detail in the *A'in-i Akbari* and by Francois Bernier (in India, 1658–1668). The *A'in-i Akbari* furnishes us with details of wage rates for different kinds of work, invariably in terms of money, and on a daily basis. But in construction work carried out under imperial aegis, piece rates are also specified.[17]

2.8.2 Compensation and Wages under the *Abu'l-Fazl*, Akbarnama

The compensation and wages has also been describe in the Akbarnama, in such a period every aspect and prospect has been decided by Akbarnama, as per Akbarnama no caste discrimination during the period of Akbarnama, and that time of period the India has four major religion, Sanatan that is called Hindu, Islam, Jain and Budhzam and in some parts of State Esai, and no religious ban in any manner, and labour were to free to work any where and no discrimination for labour also, and concept of education were less and less and development were in little position as per comparison of now days, that is why most of them were come in labour category.[18]

CHAPTER -3

[16] The World of Labour in Mughal India (c.1500–1750)Published online by Cambridge University Press: 20 September 2011
[17] The World of Labour in Mughal India
[18] Akbarnama

LEGISLATION APPROACH OF EMPLOYEES' COMPENSATION IN INDIA

3.1 Introduction

The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, rendered it advisable that they should be protected, as far as possible from hardship arising from accidents. After a detailed examination of the question by the Government of India, Local Governments were addressed in July 1921, and provisional views of the Government of India were published for general information. The advisability of legislation had been accepted by the great majority of Local Governments and of employers' and workers' associations and the Government of India believed that public opinion generally is in favour of legislation. In June 1922 a committee was convened to consider the question. After considering the numerous replies and opinions received by the Government of India, the committee was unanimously in favour of the legislation and drew up detailed recommendations. On the recommendations of the committee, the Workmen's Compensation Bill was introduced in the Legislature.[19] As Workmen's Compensation Act, 1923 and Workmen's Compensation Rules, 1924

3.2 Meaning and Definition

The general principles of workmen's compensation command almost universal acceptance and India is now nearly alone among civilised countries in being without legislation embodying those principles. For several years, the more generous employers have been in the habit of giving compensation voluntarily, but this practice is by no means general. The growing complexity of industry in India with the increasing use of machinery and consequent danger to workmen, employees along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected for that, as far as possible from hardship arising from accidents, incidents. An additional advantage of legislation of this type is that by increasing the importance for the employer of adequate safety devices with other tools, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects of such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive, and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workmen may be expected. A system of insurance would prevent the time burden from pressing too heavily on any employer. After a detailed examination of the

[19] https://hrylabour.gov.in/staticdocs/labourActpdfdocs/Workmen_Compensation_Act.pdf

question by the Government of India, Local Governments were addressed in July 1921, and provisional views of the Government of India were published for general information. The advisability of legislation has been accepted by the great majority of Local Governments and 'at employers' and workers' association and the Government of India believe that public opinion generally is in favour of the Legislation. In June 1922, a committee was convened to consider the question. This committee was composed, for the most part of members of the Imperial Legislature. After considering the numerous replies and opinions received by the Government of India, the committee was unanimously in favour of the legislation and drew up detailed recommendations regarding the lines which in its opinion such legislation should follow. The Bill now presented follows these recommendations closely. Several supplementary provisions have been added where necessary, but practically no variations of importance have been made. The Bill contains two distinct proposals. In Chapter II modifications are made in the ordinary civil law affecting the liability of employers for the damages in respect of injuries sustained by their workmen; these clauses will operate only in actions before the ordinary civil courts. The main part of the Bill makes provisions for workmen's compensation and sets up special machinery to deal with claims falling under this category. Both parts of the Bill, however, apply to the same classes of workmen. If the scope of the employers' liability clauses was made wider than the scope of the workmen's compensation provisions, there would be considerable danger of a great increase in litigation. The classes included are those whose inclusion was recommended by the committee and are specified in Schedule II. Two criteria have been followed in the determination of the classes to be included— (1) that the Bill should be confined to industries which are organised; (2) that only workmen whose occupation is hazardous should be included. The general principle is that compensation should ordinarily be given to workmen who sustained personal injuries in accidents. Compensation will also be given in certain limited circumstances for disease. The actual rates of compensation payable are based on the unanimous recommendation of the committee. They are in every case subject to fixed maxima, in accordance with the committee's recommendations. It should be remembered, however, that the more highly paid workmen will be enabled in cases to which the employers' liability clauses will apply, to obtain damages on a scale considerably in excess of the maximum fixed for workmen's compensation. A consistent endeavour has been made to give as little opportunity for disputes as possible. Throughout the Bill in the definitions adopted the scales selected, and the exceptions permitted the great aim has been precision in order that in as few cases as possible should the validity of a claim for compensation or the amount of that claim be open to doubt. At the same time, on the unanimous recommendation of the committee provision has been made for a special Tribunal to deal cheaply and expeditiously with any disputes that may arise, and generally to assist the parties in a manner which is not possible for the ordinary civil courts.

3.3 Legislation Published in Official Gazette and become Act and Rules

The Workmen's Compensation Bill having been passed by the Legislature received its assent on the 5th March 1923. It came into force on the 1st day of July 1924 as THE WORKMEN'S COMPENSATION ACT, 1923 (8 of 1923).[20], prior to the aforesaid Act, no Act independent Act were framed to protect the workmen's or employees for the compensation.

3.4 Objective of Legislation of The Workmen's Compensation Act of 1923 and Workmen's Compensation Rules, 1924

A law passed by the Indian Parliament in 1923 called the Workmen's Compensation Act establishes the provision of compensation to employees for injuries sustained while working. All factories, mines, oil fields, plantations, railroads, retail stores, and other establishments must comply with the Act. In the event of injury or death brought on by employment, the Act offers some sort of social protection to employees and stipulates quick resolution of disputes. The main objective of the Workmen's Compensation Act is to provide compensation to employees, or their dependents, in case of injury, illness, or death caused due to employment, and to provide a system of speedy settlement of disputes. Moreover, the Act ensures the payment of compensation to workers in case of occupational accidents, illness, or death, and helps them to get back to work with minimum disruption. By encouraging employers to give their employees a secure and safe working environment, the Act also aims to improve workplace occupational safety. Furthermore, it also encourages employers to take care of their employees by providing medical facilities and other benefits. The Act also seeks to provide a uniform system of compensation across India, by setting up a Central Government and State Government-appointed tribunal to hear claims and disputes. The Act also seeks to ensure that employers take responsibility for the safety.[21]

3.4 Applicability of The Workmen's Compensation Act of 1923 and Workmen's Compensation Rules, 1924

The Workmen's Compensation Act of 1923 is an Indian law that offers benefits to workmen's employee's in the event that they sustain physical harm or pass away while performing their job-related duties. It also applies to specific hazardous jobs and all factories and establishments with ten or more employees. All employees, including those who work part-time, temporarily, or casually, are subject to it. The Act mandates the payment of compensation in cases of harm, incapacity, or death brought on by an accident or work-related illness. In case of death, the Act provides for the payment of a lump sum as well as a monthly pension to the survivors. The type of disease or injury, the degree of disability or demise, and the worker's earnings all affect how much compensation is awarded.[22]

[20] Employees' Compensation Act, 1923 42nd Edition, 2022 EBC
[21] Workmen's Compensation Act, 1923 Objective

[22] Understanding Workmen's Compensation Act, 1923 in Detail

3.5 Features of The Workmen's Compensation Act of 1923 and Workmen's Compensation Rules, 1924

As per section 3 of Employees Compensation Act, any employee's and workmen's suffers personal injury as a result of accident

- **I.** Injury in partial in nature or partial disablement
- **II.** Injury for periodic more than 3 days
- **III.** Injury not resulting death or permanent disablement
- **IV.** Injury cause by influence of drink of drug
- **V.** Wilful Disobedience of the employee's to an order expressly given
- **VI.** Wilful of removal or disregard by employee of any safety
- **VII.** Any disease occupational peculiar to that employment

In aforementioned the condition are satisfied and verified then employer are liable to pay compensation under the Employee's Compensation Act, The Workmen's Compensation Act also mandating to employer to provide benefit of workers who become permanently or temporarily disabled due to job accidents.

3.6 Workmen's Compensation Act Policy Scope

The scope of workmen's compensation policy is varied and broad and covers a wide range of benefits for employees who sustain an injury or contract a disease in the course of their employment. In general, the insurance covers medical costs, lost wages reimbursement, and other benefits. In the event of death, the policy may also provide for a lump sum payment to the deceased's family. In addition, the policy may provide for rehabilitation expenses, and certain other miscellaneous benefits such as funeral costs and legal expenses. The scope of the policy depends on the employer, state, and type of injury or illness.

The following front-line employees are protected under workers' compensation in India:

- Personnel employed by the establishments listed in Schedule II of the Act, including factories, mines, docks, building sites, and specific businesses.
- Employees who were hired internationally in accordance with Schedule II of the Act.
- It applies to any job involving work linked with vehicles, members of an aircraft crew, captains, helpers, drivers, or mechanics.
- Not employed permanently railroad personnel that work in administrative, district, or subdivisional offices.

Armed services members are not eligible for Workmen's Compensation coverage since they are covered by the Employee State Insurance (ESI) Act.

According to the 2017 amendment to the Act, employers are required to advise employees of their rights to receive compensation. This can be done in a language that the employee can comprehend, on paper, or online.[23] It is important to mention here that the Employee's Compensation amended Act is provided that the employees / workmen are liable to insured mandatorily, for the propose of giving benefit to employer as well as to the employees

3.7 Calculation of compensation under the Workmen's Compensation Act

That section 5 of the Employee's Compensation Act is providing the method of calculation of wages "monthly wages" assume to payable for a moth's service, employees work continue not less than 12 month immediately to the incident / accident being in service of the employer, who is liable to pay compensation, the monthly wages of the employees shall be one twelfth of the total wages which have fallen due for payment to him by the employer in the last, even the work may also be provide in the same locality of the employee, and as per section 7 of the Employees Compensation Act any right to receive half monthly payments, by agreement between the parties or if the parties cannot agree the payment may not less than six moth, the propose of act to provide efficacious remedy to immediate needy persons / employees – workmen.

3.8 Intention of Legislature for Workmen's Compensation Act

That the main intention of the Legislature to provide safety and security of the employees and dependents if any partial or permanent injury or disabilities, to provide compensation to inured for proper medical and also for maintaining inured, families, in case of death, the dependants are entitle for compensation resulted from the financial crush, for the purpose restore the financial collapse and further for reformation of families, economic stability for sudden faced problem due to accident, the Act is made in 1923 and till date is in operation and in force, all over covering the most of the aspect and prospect of the employees – workmen.

CHAPTER - 4

PROCEDURE OF FILING OF CASES UNDER THE ACT

4.1 Introduction

[23] Documentation for Workmen's Compensation Policy

Compensation means any person who got injured or accident any way who is the workmen of the employer, the injured person(s) or family members of the injured, partly, or (died) can seek compensation from the employer, as per the plain reading of the Employees' Compensation Act 1923, and the procedure has been defined under the Workmen's Compensation Rules, 1924, it is further clarified that the even minor dependent can file an application for seeking compensation under the Act[24]

4.2 Form of Application

Under the Act, section 3 is providing that Employer's liability for compensation, if any person caused, or received injuries during the work, the employer is duty bound by law to provide adequate compensation, there is no matter under which circumstances injury is received, the Act provides that compensation to the workmen for the purpose of rehabilitating to the injured and dependent, application under section 22 of the Act.

4.3 Claim

As per the Act section 2-D injured or dependent can sue for compensation and section 10 of the Act define Notice and Claim, no claim application can be entertained after the expiry of two years of the incident, and the application is required to move before the Commissioner with the detail of incident and name of dependent, no claim can be entertained after the expiry of two years and Limitation Act not applied, on the point of delay the Act is silent totally

4.4 Notice

That the Commissioner is required to issue notices to the affected parties, the opportunity of hearing is mandatory, no order can be passed without giving the opportunity of hearing to the affected parties, and the opportunity of natural justice for hearing must be given to all the affected parties, As per natural justice opportunity of hearing must be given each and every case.

4.5 Evidence

That the Commissioner is required to issue notices to the affected parties, the opportunity of hearing is mandatory, no order can be passed without giving the opportunity of hearing to the affected parties, and the opportunity of natural justice for hearing must be given to all the affected parties.

4.6 Ex-Parte (Order in violation of natural justice.

[24] Employees' Compensation Act 1923 (section 2 -D)

The Empolyees' Compensation Commissioner power is defined under section 23 of the Act "Power and Procedure of Commissioners" The Commissioner is required to send the notice of claim to the opposite – respondent, by fixing the proper date and time to seek proper reply on a claim filed against him within time bound manner or commissioner may choice in accordance with the law, without proper service no final order can be passed under the Act, as per natural justice opportunity of hearing must be given to the affected parties, no claim can be accepted ex-parte without hearing of the affected parties.

4.7 Award

Application under section 22 of Employees' Compensation Act, the Commissioner may issued notice to the effected parties and after notice defendants – respondents may file reply the claim filed by the applicant, the Commissioner may required to framed issue in context of claim whether application of claim is maintainable or not, or demanded compensation is justified or not, applicant's claim is justified under the proper jurisdiction or not, evidences filed in support or dis support is liable for justifying claim or not and other various aspect are liable to be check for proper adjudication of the case, then passed the Award if evidence and oral submission is supported so, called as Award under the Act.

4.8 Ex- Parte Award (Without Giving Opportunity of Hearing)

That the Employees' Compensation Commissioner has jurisdiction to decide the claim under the Employees' Compensation Act 1923 and Rule 19124, Application for claim entertain under section 22 of the Act, and Section 10 has been defining Notice and Claim, in case of claim has been, the commissioner has required to issue notice to the respondent / (respondents) i.e. opposite party (ies), as per nature justice provide the opportunity of hearing if the notice has been served upon the respondent(s), even after service of notice parties did not appear in the proceeding or after appearance disappear again, Commissioner has ample to proceed in the matter ex-parte and in the situation of non-appearance of the parties claim has been approved and passed the order which calls ex-parte Award.

4.9 Recall of Ex-Parte Award – Compensation

As per section 6 of the Employees Compensation Act 1923, the Commissioner has no power to review his own order regarding an order passed allowing the claim partly or fully or rejected partly or fully, the Act is very much silent on review of Award or rejection of Award, as per section only part of the payment may allow and disallow power has been assigned and monthly payment can be ordered under the section 6 in the provision of Review, Recall is not provided under the Act 1923.

4.9.1 Recall Application under the Workmen's Compensation Rules, 1924

Any order passed by the Employees' Compensation Commissioner under the Employees' Compensation Act 1923, its rule i.e. Workmen's Compensation Rule 1924, Rule 41 is provided that the Employee's Compensation Commissioner is having the power of CPC[25] i.e. first schedule Order 5 Rule 9 to 13 and 15 to 30 and other relevant order and rules of CPC Rule 41 of Workmen's Compensation Rule 1923 is reproduced here, "Rule 41 of the Workmen's Compensation Rule 1924 **"**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."[26]

4.9.2 Setting aside decrees ex parte under the Code of Civil Procedure, 1908

That the Employee's Compensation Rule 1924, Rule 41 is providing that the recall of ex parte award / order the provision of CPC Order 9 Rule 13 and 15 to 30 is applicable Employee's Compensation Rule 1924, for setting aside decrees ex parte, relevant provision are reproduced here, "The Code of Civil Procedure, 1908 Order 9 Rule 13 (setting aside decree ex parte) Order 9 Rule 13 is quoted below " In any case in which a decree is passed ex-parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also

[25] Code of Civil Procedure, 1908
[26] Rule 41 of Workmen's Compensation Rule 1923

Provided further that no Court shall set aside a decree passed ex-parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

Explanation:- Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground tha the appellant has withdrawn the appeal, no application shall lie under this rule for setting a side that ex parte decree"[27]

That the act is totally silent on the position of ex-parte proceedings, and if the proceedings initiated and proceeded as ex-parte then what procedure may be adopted for the respondent / respondents appearance, Legislation has not discuss on the point of appearance and non appearance of the respondent what process may be adopted if the Court is proceeded non appearance of the opposite parties – defendants, only Workmen's Compensation Rule 1924 of Rule 41 is provided that the provision of Code of Civil Procedure will be applicable that order 9 rule 13, 15 to 30 will apply, that the Legislation has left the provision of Recall and Actual Review in Employee's Compensation Act, therefore providing in Rule is not sufficient therefore Act with regard to extent of Recall and Actual Review is required for adequate and equal justice of litigant and also to the defendant – respondent, for equal treatment either wise effected party may loss and injury which can not be compensated in any manner.

4.10 Provision of Appeal against the Judgement and Award passed by Commissioner Empolyee's Compensation Act, 1923

That claim application has been filed under section 22 before Commissioner of the Employees Compensation Act 1923, after notice to the all proper parties, and giving opportunity of hearing to the effected parties required under the law, the opportunity of hearing has not been given by any reasons then order become ex-parte, and order and award is questionable, on the application of Review and Recall of respondent same is required again consideration by the Commissioner, Section 30 is providing for Appeal against any order passed by the Commissioner of Employee's Compensation Act 1923, the provision of section 30 of Employees Compensation Act, 1023 is produce here with,

" 30 Appeals.

(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:—

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

[(aa) an order awarding interest or penalty under section 4A;]

(b) an order refusing to allow redemption of a half-monthly payment;

[27] Order 9 Rule 13 of The Code of Civil Procedure, 1908

(c) an order providing for the distribution of compensation among the dependants of a deceased [153] [employee], or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees: Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties: [Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.]

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of [the Limitation Act, 1963 (36 of 1963)], shall be applicable to appeals under this section.[28],"

There is several other question which are liable to deal and discuss here, in Case of New India Assurance Co. Versus M. Jayarama Naik, (1984) 1 LLJ 171 (Ker) (DB) whether limitation Act is applied or not the Hon'ble Kerala High Court has held in the Case of New India Assurance Co. (supra) limitation Act is applied and distinguishing Central Engineering Corpn. Dorai Raj AIR 1960 Ori 39

4.10.1 Maintainability of Appeal under section 30 against the Judgement and Award passed by Commissioner Empolyee's Compensation Act, 1923

That on the position of maintainability there are several judgement of the various Hon'ble Courts which are discuss here

[28] Section 30 of Employee's Compensation Act 1923 42nd Edition, 2022 EBC

Maintainability of appeal. An appeal filed by the insurer is not maintainable in the absence of depositing the amount of compensation. United India Insurance Co. Ltd. v. Gulam Qadir Dhar, (1993) 2 Cur LR 308: (1993) 2 LL 9:1993 ACJ 288(J&K). See also Koili Bewa v. V. Akshaya K. Mishra, (1994) 2 LUJ71:(1994) 2 Cur LR 477: (1944) 2 LLN 651. See also United India Insurance Co. Ltd. v. Kashimsab, 1993 Lab IC 2241: (1993) 2 Cur LR 328: (1994) 1 LL 500(Karn.) (DB); National Insurance Co. Ltd. v. Narendra Sarnal, 1993 ACI 1095 (Ori); New India Assurance Co. Ltd. v. Mohinder Singh, 1986 AC 1101 (MP); New India Assurance Co. Ltd. v. M. Jayarama Naik, 1982 ACJ 3: (1981) 43 FLR 62: (1984) 1 LLI 171 (Ker)(DB); Oriental Insurance Co. Ltd. v. Renu Devi, (1997) 2 TAC 418: (1997) 2 LLN 1171: (1997) 2 LL 10 (Pat). But see 5.D. Sharma v. Ramesh Mahakud, 1993 ACI 385 (Ori); National Insurance Co. Ltd. v. Saifuddin, 1992 AC 763; United India Insurance Co. Ltd. v. Sk. Alimuddin, (1995) 1 LUI 488: (1995) 1 Cur LR 22: 1995 ACI 1227 (AP); New India Assurance Co. Ltd. v. Sankar Behera, (1988) 2 Cur LR 279: 65 Cut LJ 47 (Ori); New India Assurance Co. Ltd. v. Manorama Sahu, 1994) 1 LLN 819:(1993) 2LIN 332: (1993) 2 ACI 930 (Ori); Oriental Insurance Co. v. Lalita Bai, (1997) 75 459 (MP): Oriental Insurance Co., Ltd. v. Vasantha Pramber Handre, 1997 Lab IC-2561 (Kam).

Chapter XI, MV Act, 1988 (containing Section 149) is inapplicable to proceedings under the 1923 Act Hence defences available to insurer in appeal under Section 30, 1923 Act are not limited to defences available to insurer under Section 149, MV Act, 1988. Subject to limitations contained in Section 30, 1923 Act, an appeal would be maintainable before High Court under the 1923 Act, National Insurance Co. Ltd. v. Maston, (2006) 2 SCC 641:2006 SCC (185) 401

Scope of right of appeal is the same for the employer as it is for the workman, Om Parkash Botish Ranjit, (2008) 12 SCC 212. No appeal is maintainable under Section 30 against an order rejecting an application for recall of ex parte order, Shravan Pal Singh v. Pooran Nath Goswami, (1996) 2 Cur LR 865: (1996) 2 LLN 980 (1996) 74 FLR 1853. An application under Order 9 of the CPC, 1908, for setting aside an ex parte order can be filed before the Workmen's Compensation Authority by virtue of Rule 41. But, his order dismissing such application is not appealable under Rule 1 of Order 43 of the Code or even u/s 30 of the Act. Praveen Industries v. Bandwar Singh, (1990) 1 LLN 915: (1990) 2 LL 412 (Karn) (08). Where the remedy of appeal was available but relief was sought instead by means of a writ petition it was held that such a writ petition could be rejected on the ground of alternative remedy. C.S. Azad University of Agriculture and Technology v. Court of Workmen Compensation Commr., 2003 Lab IC 140 (All). No appeal lies against a finding of Commissioner that claimant is workman which is based on evidence as it is essentially finding of fact. New India Assurance Co. Ltd. v. Karunakar Bhal, 1998 Lab IC 3254 (Ori). The question whether a workman has or has not retired after obtaining full wages and pensionary benefits is a question of fact on which no appeal lies. Chandametto Colliery, Western Coalfields Ltd. v. Mangloo, 1997 ACI 544 (MP). Whether the claimant was working under the appellant on the date of occurrence of the accident is a question of fact decided by the Commissioner and same cannot be interfered within appeal. State of J&K v Amar Chand, 1997 Lab IC 817 (J&K). Second appeal.

The dismissal of appeal for non-observance of the requirements of deposit and certificate would in all cases operate as res judicata against the appellant for filing a second appeal against the same award. J&K State Forest Corporation v. Robail Singh, (1993) 2 LLI 502: (1993) 2 Cur LR 765: (1993) 67 FLR 1060(J&K). Substantial question of law. The first proviso to Section 30(1) states that no appeal shall lie against any order unless a substantial question of law is involved. The said proviso has been incorporated into the section with the object that the workers shall not be dragged into unending litigation in the highest forums, Raveendran v. Somavally, (1996) 1 LU 325: 1995 Lab IC 2765: 1995 LLR 903 (Ker)(DB). An appeal under Section 30 lies to the High Court only a substantial question of law. Rajiyabi v.. Mackinnon Mackenzie & Co. (P) Ltd., AIR 1970 Bom 278: 1970 AC 350: (1970) 2 LLJ 320; Boys Town Society, Tirumangalam v. V. Palani, (1997) 77 FLR 229 (Mad); Dwarka Arm Factory v. R. Khaja Hussain, (1997) 2 Cur LR 741 (Kam). So where the appellant has not been able to formulate any substantial question of law involved, appeal deserves to be dismissed. Shipra Bhowmick v. Presiding Officer, (1996) 2 TAC 248 (MP). The phrase 'substantial question of law must be given a wider construction than Section 110 of the Civil Procedure Code. It should cover even cases in which the Commissioner has clearly misdirected himself on a question of law such as awarding compensation without giving notice to employer, AIR 1958 All 564. This section does not exclude application of Section 12 of the Indian Limitation Act. Where the order is not pronounced in the presence of the parties and the information is given only on a subsequent date then limitation will start from such a date. Brahuman v. Balu, AIR 1955 NUC 1603 (Punj). A substantial question of law exists where there is some doubt or difference of opinion. Bhagwandas v.Pyarelal, AIR 1954 MB 59. An appeal lies against the order directing payment of lump sum compensation. A memorandum of appeal without a certificate from the Commissioner cannot amount in law to a formal presentation of an appeal. Bhurangya Coal Co. Ltd. v. Sahebajan, AIR 1956 Pat 299. An appeal without a certificate of deposit within time is barred by limitation. Sadaram v. Chhotu Ram, AIR 1957 MP 26. Mere admission of a belated appeal does not mean implied condonation of delay. Managing Director, Orissa SRTC v. Surendra Kumar, 1986 Lab IC 1977 (Ori): (1987) 1 LLN 358. Proviso to Section 30 mandates that no appeal shall lie unless substantial question of law is involved in it, Oriental Insurance Co. Ltd. v. Nagaraj, (2008) 2 CTC 407. Finding of fact cannot be a foundation for framing the substantial questions of law, Jamila Begam v. The Scheme of Section 30 of the Workmen's Compensation Act itself is very clear and said section contemplates appeal against the order awarding compensation and against order awarding interest on penalty. The appeal is to be entertained only if substantial question of law is involved and in case of any appeal filed by the employer, the appeal is required to be accompanied by certificate of Commissioner that the employer has deposited with him amount payable under order, appealed against, Nanda v. Bhikaji Ghanshyam Shingane, (2009) 1 Mah LJ 422. Appeal to High Court against award of Commissioner. When neither any substantial question of law nor any question of law arose, High Court interfering with award and reducing compensation by merely mentioning that it is in "interest of justice", held, unwarranted and unsustainable, Jaya Biswal v. IFFCO Tokio General Insurance Co. Ltd., (2016) 11 SCC 201: (2016) 3 SCC

(Civ) 775. Workmen Compensation Commissioner is last authority on facts. Parliament restricted scope of appeals under Section 30 only to substantial questions of law, being welfare legislation. Interference with findings of facts by High Court is not permissible when no perversity was found in findings of fact of authorities below. Interference with findings of fact, held, impermissible in such circumstances, Golla Rajanna v. Divi. Manager, (2017) 1 SCC 45: (2017) 1 SCC (Civ) 320. Denial of compensation awarded by Commissioner for death of deceased driver merely on submission of Insurance Company before High Court that deceased was owner of vehicle, without any basis, is unsustainable, Palwinder Kaur v. Oriental Insurance Co. Ltd., (2016) 13 SCC 317. Improper disposal of appeal.-Judgment of High Court setting aside order of Employees' Compensation Commissioner awarding Rs 8,70,576 compensation for injuries sustained by appellant claimant without hearing him, not sustainable. Matter remitted to High Court to decide appeal filed by Insurance Company afresh, after granting opportunity of hearing to appellant claimant, Mohd. Anwar v. Oriental Insurance Co. Ltd., (2018) 3 SCC 300.[29]

CHAPTER - 5

CASE LAWS/JUDGEMENTS

5.1 Introduction

That the Employee's Compensation Act 1923 is very much silent on the point of review and recall, but Workmen's Compensation Rule 1924, Rule 41 is providing that the Commissioner of Employee's Compensation Act, 1923, having power of Civil Court and Order 9 Rule 13 of Code of Civil Procedure, 1908

[29] Employee's Compensation Act 1923 42nd Edition, 2022 EBC

applied, therefore rule 41 is providing them for recalling of ex parte order/award passed by the Commissioner of Employees Compensation Act 1923, the provision of Recall and Actual Review as provided in CPC, the legislature has not inducted or introduced in Employee's Compensation Act 1923 therefore in deciding / in proceeding of the case of claim learned judges are very much differing opinion that the Employee's Compensation Commissioner has no power to recall his own order either on merit or on ex parte and some of learned judges are delivering judgement on the basis of the Rule, holding that that the Employee's Compensation Commissioner has the power to recall its own order, and some of the Hon'ble Court are in opinion that the Commissioner of Employee's Compensation Act, 1923 has no power to recall its own order either on merit or on ex-parte, Hon'ble Court has given different – different judgements / orders, most of the orders of the learned judges are per incuriam, finding are bad in the eye of law, and also against the precedent which are earlier pronounced by the other Hon'ble Court, finding of orders are deferring to one other, therefore is liable to discuss here in detail and find the problem and solution to the same, important judgement are quoted and discuss here;

5.2 Table of case on the point of Employee's Compensation Act, 1923, the Commissioner has power to recall Ex-Parte Order

Srl	Party Names	Dt of Decision	By Hon'ble Court	Relevant para	Report in/Case No.
1	Satnam Verma Vs. Union of India	09.12.1984	Supreme Court	Para 7, 8, 9, and 10	AIR 1985 SC 294 & 1984 Supp (1)SCC 712
2	Grindlays Bank LTD Vs Central Government Industrial Tribunal & Ors	12.12.1980	Supreme Court	Para Second Third Fourth And five	1981 AIR 606, 1981 SCR (2) 341
3	United India Insurance Co. Ltd. Vs. Workmen's Compensation	17.01.1996	Allahabad	14	1997 ACJ 1028
4	Syndet (India) Private Ltd Vs. Presiding Officer	25.01.2005	Allahabad	3	2005 (2) ESC 1239

5	Raj Bahadur Vs. Presiding Officer	08.01.2010	Allahabad	first , Second and third	Wrt - No. 575 of 2010
6	M/s Universal Cylinders Limited Vs. The Presiding Officer	31.01.2020	Allahabad	Last page	Writ C No. 15333 of 2019
7	Kolandhayee Vs. The Commissioner Labor (Commissioner Workmen's Compensation Act)	19.04.2010	Madras	Last page	W.A. No. 2505 of 2001
8	A.V. Varghese Vs. N.K. Kumaran	10.08.2011	Kerala	4 and 5	WP (C) No. 14248 of 2009

5.3 Table of cases, which are not giving power to Commissioner of Employee's Compensation, Act, 1923 with regard to recall of Ex-Parte Order

Srl	Party Names	Dt of Decision	By Hon'ble Court	Relevant para	Report in/Case No.
1	Marshal Securities Vs. The Presiding Officer Labour Court (2) UP Kanpur and 2 others	13.09.2006	Allahabad High Court	31 and 34	Writ – C No. 33855 of 2006
2	Mohd. Ikram & Another Vs. Dy. Labour Commissioner, U.P. Saharanpur and others	07.05.2013	Allahabad High Court	6	Civil Misc Writ Petition No. 15504 of 2011

3	Balaji Stone Crusher Throu, Partner Kiran Saini and other connected matter Vs. State of UP throu Geology and Mines and Ors	02.08.2022	Allahabad High Court, Lucknow	11	Writ – C No. 7606 of 2019
4	Raman Agnihotri Vs. Commissioner, Workmen's Compensation, Kanpur and others	28.11.2008	Allahabad High Court	21, 25	Civil Misc. Writ Petition No. 61531 of 2008
5	Mayan Vs. Mustafa and another	08.11.2021	Supreme Court of India	2	Civil Appeal No. 6614 of 2021
6	Sangam Tape Co. Vs. Hans Raj	27.09.2004	Supreme Court of India	6, 7, 8, 12	Civil Appeal No. 2064 of 2002
7	Nirmla and Another Vs. State of Uttar Pradesh and others	25.05.2022	Allahabad High Court Lucknow bench Lucknow	1, 2, 3 and 4	Writ-C No. 2793 of 2022
8	Nimla and Another Vs. State of UP & Others	22.12.2022 & 10.01.2023	Allahabad High Court Lucknow bench Lucknow	1 and 2	Writ – C No. 9224 of 2022

5.4 Satnam Verma Vs. Union of India (UoI) decided on 19 October 1984 Supreme Court finding recall of ex parte order and award with regard to power of Employee's Compensation of Commissioner Judgement Dt. 09.12.198 Reported in AIR 1985 SC 294 & 1984 Supp (1)SCC 712

That the Hon'ble Apex Court in Case of Satnam Verma Vs. Union of India[30] has decided the issue, that the Commissioner of Employee's Compensation Act, 1923 is having power to recall his own order if passed is in nature of ex parte, without giving the opportunity of hearing, providing natural justice to the effected parties is necessary, brief of the case of Satnam Verma Case is reproduce here as under, " Art industrial dispute arising out of the termination of service of the appellant who was employed as a conductor, by the Chandigarh Transport Undertaking was referred to the Labour Court for adjudication and it was numbered as Reference No. 55 of 1981. On receipt of the notice of the reference, the workman and the employer both filed, their respective statements. The reference came up for hearing on February 23, 1982 and when it was called out neither the appellant nor his representative one Shri M.L. Gupta was present. The Labour Court directed the matter to be heard ex parte. After making that Order, the Labour Court proceeded to observe that as no evidence has been led by the appellant, there is nothing to show that the termination of service was illegal or invalid, and concluded that the appellant was therefore, not entitled to any relief. Soon thereafter an application was moved by the appellant for recalling the Order disposing of the reference ex parte. It was stated in the application that the date given to the appellant to appear before the Court was February 26, 1982 and not February 23, 1982 when the reference was disposed of ex parte. The employer contended that as the award has already been published in the Gazette there is no provision for recalling the award made ex parte nor restoring the case to file. In the meantime the presiding officer of the Labour Court was transferred arid some other presiding officer was appointed and before him the application came up for hearing. The Labour Court held that once the award was published in the Gazette, the Labour Court has no jurisdiction to recall the award or to set aside the ex parte award and to restore the case to file. The appellant moved the High Court under Article 226 of the Constitution,[31]" from the perusal para 3 of the Satnam (supra) case which decided by the Hon'ble Apex it is made clear that the Hon'ble Apex Court has decided that the issue pertaining to ex parte order is liable to be quashed if the approaching – aggrieved persons has shown sufficient cause for non – appearance.

5.4.1 Satnam Verma Vs. Union of India (UoI) para 6, 7, 8, 9 and 10 is quoted below

"7. In the case of Grindlays Bank Ltd., the specific contention canvassed was whether where an ex parte award is made and published in the Official Gazette, the Industrial Tribunal has the jurisdiction to entertain the application for setting it aside if sufficient cause is shown for absence of appearance on the date on which an

[30] AIR 1985 SC 294 & 1984 Supp (1)SCC 712

[31] www.supremecourt.in

ex parte award was made and it was answered in the affirmative. this Court referred to Rule 22 and Rule 24(b) of the Industrial Disputes (Central) Rules, 1957 and held that the Industrial Tribunal had the power to pass an Order setting aside the ex parte Order. In reaching this conclusion, the Court observed that if the Tribunal has the power to proceed ex parte as provided by Rule 22, it should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. The. Court then proceeded to examine the scheme of the relevant rules and observed that Rule 22 unequivocally confers jurisdiction on the Tribunal to proceed ex parte. The Tribunal can proceed ex parte if no sufficient cause for absence of a party is shown. This power was interpreted to comprehend that if sufficient cause was shown which prevented a party from appearing, then in the terms of Rule 22, the Tribunal will have had no jurisdiction to proceed ex parte and consequently, it must necessarily have power. to set aside the ex parte award. The Court in terms observed that the power to proceed ex parte is subject to the fulfillment of the condition laid down in Rule 22 and therefore it carried with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing. The Court then referred to Rule 24(b) and held that where the Tribunal or other body makes an ex parte award, the provisions of Order IX, Rule 13 of the CPC are clearly attracted and it logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award. The Court then proceeded to examine the Contention that once an award is published in the Official Gazette, be it an ex parte one, does the Tribunal become functus officio and therefore, will have no jurisdiction to set aside the ex parte award and that as contended before us the appropriate Government alone could set it aside and rejected it holding that no finality is attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Court held that the Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable Orders. We have extensively referred to this decision because it effectively answers all the limbs of the contention canvassed before us and which unfortunately, found favour with the Labour Court and the High Court :

8. It needs hardly to be pointed out that Rule 22 and Rule 24(b) of Industrial Disputes (Central) Rules, 1957 are in pari materia with Rules 22 and 24 of the Industrial Disputes (Punjab) Rules, 1958 which are applicable to the facts of the present case. Therefore, the decision of this Court would mutatis mutandis apply in the matter pf interpretation of the Punjab Rules. It must follow as a necessary corollary that the Labour Court as well the High Court denied to itself the jurisdiction vested in it to entertain an application for setting aside an ex parte award and reached an erroneous conclusion.

9. A feeble attempt was made to urge before us that the High Court accepted the view of the Tribunal that on merit no case was made out for setting aside an ex parte Order. We remain unconvinced. In fact the Labour Court was overwhelmed by its erroneous approach that it had no jurisdiction to entertain an application for

setting aside an ex parte Order and that appears to have influenced its decision in rejecting the application for setting aside the ex parte award.

10. Turning to the facts of the case, the first date of the hearing of the reference was, according to the Labour Court, February 23, 1982 and the date was fixed for framing issues, leading evidence and disposal of the reference, a sort of an omnibus stage. That apart according to the appellant, he was given the date February 26, 1982. He appeared on Feb. 26, 1982, when he found that the matter was disposed of ex parte on February 23,1982. On the same day, he moved an application pointing out that his information about the date was incorrect. This seems to be a bona fide assertion not seriously controverted. The Labour Court was therefore in error in rejecting this request promptly made. We are therefore, satisfied that both the Labour Court and the High Court were in error in rejecting the application even on merits."

The Hon'ble Apex Court in para 11 of the supra judgement and allowed the special leave petition and set aside the order of the Hon'ble High Court rejecting the writ petition as well as order passed by the labor court and further direction issued that the authority shall decide the case afresh after giving opportunity of hearing to the parties effected in the case with the time bound direction to decide the case in priority basis and dispose the case within four month from the date of the pronouncement by the Hon'ble Apex Court, it is very much clear from the supra judgement that the ex parte order having no weight if parties file bona fide application for recall and recall application is maintainable in view of the above discussion of the order of the apex Court.

As the judgement of the Hon'ble Apex delivered in case of Satnam Verma (Supra) the Hon'ble Apex Court has held that the judgement and order passed by the authority without giving the adequate hearing and natural justice has not been provided that the order having no value if the bonafide and effected person has filed application for recall and requested for providing hearing and putting the evidence, the authority can not denied the same, the scope of natural justice has widely discuss in the judgement of the apex court, in fact the provision in act of Employee's Compensation Act, 1923 has not given power to recall and review the ex parte order, in fact the Legislature has error the making the law, and required for consideration and required for amendment and liable to be added, if the Legislature may not intent to do the same, the Hon'ble Courts may can consider and by way of judicial pronouncement can add the power, I can assume that the Hon'ble Apex Court by way of judicial pronouncement has given the judgement, in case there is no power in the Act of Employee's Compensation Act, 1923, even though Commissioner of Employee's Compensation Commissioner has power to recall the ex- parte order in terms of natural justice.

Finding of judgement is as under

- **A.** Ex-Parte passed
- **B.** Recall filed.

C. Presiding Officer Transferred

D. Next Join PO's of Tribunal has stated that, Tribunal / Court having no jurisdiction and rejected the same.

E. Writ Petition has been filed in the High Court, same has been rejected without any relief

F. Matter come in to Appeal, in Supreme Court of India, The Hon'ble Apex made observation that the Tribunal has power to recall the ex- parte order / award if the cause is sufficient.

5.5 Judgement of Apex Court (Supreme Court of India) In Case of Grindlays Bank LTD Vs. Central Government Industrial Tribunal & Ors

That the issues has been discussed by the Hon'ble Apex, with regard to power of recalling ex-parte order passed by the Labor Tribunal, even though the order passed ex -parte on merit same is also liable to recall and after recalling to the same, opportunity of hearing to the effected party shall be provided, and further settled that the matter may decided on marriage after hearing the effected parties, similar situation in case of Employee's Compensation Act, 1923, the Commissioner has power to recall of Ex- Parte Award / order passed in exercising the jurisdiction of the Employee's Compensation , Act 1923 the Commissioner is fully competent and all the power under order 9 rule 13 of Code of Civil Procedure, 1908, is vested in his power, the power of Code of Civil Procedure 1908, will be support and Order 9 rule 13 of Code of Civil Procedure 1908 will be apply, judgment of Grindlays Bank (supra) is quoted below,

" CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2355 of 1979.

Appeal by Special Leave from the Judgment and Order dated 25-7-1979 of the Calcutta High Court in Appeal No. 3/1978.

G.B. Pai, Mrs. Rashmi Dhariwal, Miss Bina Gupta, Mr. Praveen Kumar and J.R. Das for the Appellant.

Amlan Ghosh for Respondents 3-4.

The Judgment of the Court was delivered by SEN, J. This is an appeal by special leave from a judgment of the Calcutta High Court, by which it refrained from interfering with an order of the Central Government Industrial Tribunal, Calcutta, constituted under s. 7A of the Industrial Disputes Act, 1947, setting aside an ex parte award made by it.

The facts giving rise to the appeal are these: The Government of India, Ministry of Labour by an order dated July 26, 1975 referred an industrial dispute existing between the employers in relation to the Grindlays Bank Ltd., Calcutta and their workmen, to the Central Government Industrial Tribunal in exercise of its powers under s. 10 of the Industrial Disputes Act, 1947 for adjudication. By a notice dated March 6, 1976 the Tribunal

fixed peremptory hearing of the reference for May 28, 1976, but the hearing was adjourned from time to time on one ground or other. Eventually, the hearing of the reference was fixed for December 9, 1976. On December 9, 1976 counsel appearing on behalf of respondent No. 3, the Commercial establishments Employees Association, representing respondents Nos. 5 to 17, sought an adjournment on the ground that the General Secretary of the Association had suffered a bereavement as his father had died on November 25, 1976, and, therefore, he had to leave to perform the shradhha ceremony falling on December 9, 1976. In support of his prayer for adjournment, the counsel produced a telegram, but the Tribunal refused to grant any further adjournment and proceeded to make an ex parte award. On the basis of the statement recorded by the manager of the appellant, the Tribunal held that the respondents Nos. 5 to 17 were employed as drivers by the officers of the appellant and were not the employees of the appellant and, therefore, they were not entitled to the benefits enjoyed by the drivers employed by the appellant. On January 19, 1977, respondent No. 3, acting for respondents Nos. 5 to 17 applied for setting aside the ex parte award on the ground that they were prevented by sufficient cause from appearing when the reference was called on for hearing on December 9, 1976. The Tribunal by its order dated April 12, 1977 set aside the ex parte award on being satisfied that there was sufficient cause within the meaning of O. IX, r. 13 of the Code of Civil procedure, 1908. The appellant challenged the order passed by the Tribunal setting aside the ex parte award but the High Court declined to interfere.

Two questions arise in the appeal, namely (1) whether the Tribunal had any jurisdiction to set aside the ex parte award, particularly when it was based on evidence, and (2) whether the Tribunal became functus officio on the expiry of the 30 days from the date of publication of the ex parte award under s. 17, by reason of sub-s. (3) of s. 20 and, therefore, had no jurisdiction to set aside the award and the Central Government alone had the power under sub-s. (1) of s. 17-A to set it aside.

It is contended that neither the Act nor the rules framed there under confer any powers upon the Tribunal to set aside an ex parte award. It is urged that the award although ex parte, was an adjudication on merits as it was based on the evidence led by the appellant, and, therefore, the application made by respondent No. 3 was in reality an application for review and not a mere application for setting aside an ex parte award. A distinction is sought to be drawn between an application for review and an application for setting aside an ex parte award based on evidence. The contention is that if there is no evidence led before the Tribunal, there may be power to set aside an ex parte award, but if the award is based on evidence, the setting aside of the award cannot but virtually amount to a review.

In dealing with these contentions, it must be borne in mind that the Industrial Disputes Act, 1947 is a piece of legislation calculated to ensure social justice to both employers and the employees and advance progress of industry by bringing harmony and cordial relations between the parties. In other words, the purpose of the Act

is to settle disputes between workmen and employers which if not settled, would result in strikes or lockouts and entail dislocation of work, essential to the life of the community. The scheme of the Act shows that it aims at settlement of all industrial disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if necessary, by approaching the Tribunal constituted under the Act. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both the parties.

We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

Sub-section (1) of s. 11 of the Act, as substituted by s. 9 of the Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956 is in these terms:

"11. (1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit."

The words 'shall follow such procedure as the arbitrator or other authority may think fit' are of the widest amplitude and confer ample power upon the Tribunal and other authorities to devise such proce-

dure as the justice of the case demands. Under cls. (a) to

(c) of sub-s. (3) of s. 11, the Tribunal and other authorities have the same powers as are vested in civil courts under the Code of Civil Procedure, 1908, of (a) enforcing the attendance of any person and examining him on oath, (b) compelling the production of documents and material objects, and (c) issuing commissions for the examination of witnesses. Under cl. (d) thereof, the Tribunal or such other authorities have also the same powers as are vested in civil courts under the Code of Civil Procedure, 1908 in respect of such other matters as may be prescribed. Although the Tribunal or other authorities specified in s. 11 are not courts but they have the trappings of a court and they exercise quasi-judicial functions.

The object of giving such wide powers is to mitigate the rigour of the technicalities of the law, for achieving the object of effective investigation and settlement of industrial disputes, and thus assuring industrial peace and harmony. The discretion thus conferred on these authorities to determine the procedure as they may think fit, however, is subject to the rules made by the 'appropriate Government' in this behalf. Part III of the Industrial Disputes (Central) Rules, 1957 makes rules in this behalf. Rules 9 to 30 are the relevant rules regulating procedure. State Governments too have made their own corresponding rules. Except to the extent specified in sub-s.(3) of s. 11 of the Act and the rules framed thereunder, the provisions of the Code of Civil Procedure, 1908 are not applicable to proceedings before the authorities mentioned in sub-s.(1). The provisions of the Evidence Act, in their strict sense, likewise do not apply to proceedings before the authorities. Nevertheless, all these authorities being quasi-judicial in nature objectively determining matters referred to them, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

Rule 22 of the Industrial Disputes (Central Rules), 1957 framed by the Central Government in exercise of its powers under s. 38 of the Act, provides:

"22. If without sufficient cause being shown, any party to proceedings before a Board, Court, Labour Court, Tribunal, National Tribunal or arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or arbitrator may proceed, as if the party had duly attended or had been represented."

Rule 24(b) provides that the Tribunal or other body shall have the power of a civil court under the Code of Civil Procedure, 1908 in the matter of grant of adjournments. It runs thus:

"24. In addition to the powers conferred by the Act, Boards, Courts, Labour Courts, Tribunals and National Tribunals shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely;

(a) .....

(b) granting adjournment;"

When sub-s. (1) of s. 11 expressly and in clear terms confers power upon the Tribunal to regulate its own procedure, it must necessarily be endowed with all powers which bring about an adjudication of an existing industrial dispute, after affording all the parties an opportunity of a hearing. We are inclined to the view that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a

nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex parte award and to direct the matter to be heard afresh.

The language of r. 22 unequivocally makes the jurisdiction of the Tribunal to render an ex parte award conditional upon the fulfilment of its requirements. If there is no sufficient cause for the absence of a party, the Tribunal undoubtedly has jurisdiction to proceed ex parte. But if there was sufficient cause shown which prevented a party from appearing, then under the terms of r. 22, the Tribunal will have had no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex parte award. In other words, there is power to proceed ex parte, but this power is subject to the fulfilment of the condition laid down in r. 22. The power to proceed ex parte under r. 22 carries with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing.

Under r. 24(b) a Tribunal or other body has the powers of a civil court under O. XVII of the Code of Civil Procedure, relating to the grant of adjournments. Under O. XVII, r. 1, a civil court has the discretion to grant or refuse an adjournment. Where it refuses to adjourn the hearing of a suit, it may proceed either under O. XVII, r. 2 or r. 3. When it decides to proceed under O. XVII, r. 2, it may proceed to dispose of the suit in one of the modes directed in that behalf by O. IX, or to make such other order as it thinks fit. As a necessary corollary, when the Tribunal or other body refuses to adjourn the hearing, it may proceed ex parte. In a case in which the Tribunal or other body makes an ex parte award, the provisions of O. IX, r. 13 of the Code are clearly attracted. It logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award.

We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in Narshi Thakershi v. Pradyumansinghji is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub-sections (1) and (3) of s. 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act. While the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in s. 11. The answer to the question is, therefore, to be found in sub-s. (1) of s. 11 and not in sub-s. (3) of s. 11. Furthermore, different considerations arise on review. The expression 'review' is used in two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a status

specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.

The contention that the Tribunal had become functus officio and therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of s. 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under s. 17A. Under s. 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under s. 17. The proceedings with regard to a reference under s. 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under s. 17A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent No. 3, acting on behalf of respondents Nos. 5 to 17 on January 19, 1977 i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed the Tribunal had in any event become functus officio. We cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders.The result, therefore, is that the appeal must fail and is dismissed with costs throughout."[32]

Gist of the Case

A. Ex-Parte order has been passed
B. Recall application has been filed for setting aside of Ex-Parte Order
C. That the Tribunal has set aside
D. Challenge in High Court, same is dismissed without any relief
E. Order of High Court has been challenged in Supreme Court, same has been dismissed

[32] https://indiankanoon.org/doc/1136885/

5.6 Judgement of Hon'ble High Court Allahabad In Case of United India Insurance Co. Ltd Vs. Workmen'S Compensation date of Judgement 17.01.1996 1997 (ACJ 1028

Allahabad High Court giving finding that the Power of Recall of Ex-Parte Award / order vested in the Commissioner vested in the Employees Compensation Commissioner, and several aspect has been discuss by the Hon'ble Court in deciding the aforesaid case and lastly giving finding that the Employees's Compensation Commissioner has power to recall the ex parte order, the order dt. 17.01.1996 is reproduce here as under,

*"*United India Insurance Co. Ltd. vs Workmen'S Compensation ... on 17 January, 1996

Equivalent citations: 1997 ACJ 1028, 1996 (73) FLR 1541, (1996) IILLJ 448 All

Author: D Seth

Bench: D Seth

JUDGMENT D.K. Seth, J.

1. These two writ petitions arise out of two proceedings initiated under Section 17 of the Workmen's Compensation Act, 1923 arising out of the same accident, in which one Safdar Miyan and Insar Ahmed had died. The case as made out in Writ Petition No. 37551 of 1992 is as follows:

2. The respondents No. 3, 4 and 5 as claimants have made an application under Section 17 of the Workmen's Compensation Act which was registered as Case No. 21/W.C.A./91 against Kafeel Ahmad and others claiming compensation of Rs. 85,428 together with interest for the death of Safdar Miyan on March 1, 1991 while employed under the said Kafeel Ahmad, owner of Mini Bus No. U.P. 25-5058.

3. While the case made out in Writ Petition No. 37550/92 was that the respondents No. 3 and 4 had lodged a claim under Section 17 of the Workmen's Compensation Act, which was registered as case No. 22/W.C.A./91 against Kafeel Ahmad, claiming compensation of Rs. 1,06,257 on account of death of Nihal Beg on March 7, 1991 while employed by the said Kafeel Ahmad, owner of Mini Bus No. U.P.- 25-5058.

4. The said two cases were allowed by an order dated May 3, 1992 awarding Rs. 85,428 as compensation in each case, fixing the liability on the owner. On July 28, 1992 the claimants in both the cases filed an application for review that though the Insurance Company was a party, in spite of Section 147 of the Motor Vehicles Act, the authority under the Workmen's Compensation Act has not fixed the liability of the Insurer who is liable to pay the compensation. The Insurance company had filed its objection on Au-

gust 19, 1992 in both the cases. By an order dated September 21, 1992 the authority under the Workmen'3 Compensation Act had allowed both the application in both the cases holding that the authority

had jurisdiction to review and that the liability of the Insurer was not taken into account though copy of the insurance policy was on record and that prior to the application dated July 28, 1992 similar application was filed on June 30, 1992, on which no action having been taken, second application was filed and, therefore the application was treated as within time. It is these orders which have been challenged by means of these two writ petitions.

5. Learned counsel for the petitioner Insurance Company contends that the Code of Civil Procedure is applicable in a proceeding under the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act) only to the extent as provided under Section 23 of the Act namely for the purpose of taking evidence enforcing attendance of witnesses and compelling production of documents and material object. By reason of Section 23 of the Act jurisdiction to review has been clearly excluded inasmuch as though certain specified provision of the Code of Civil Procedure was made applicable but the provision for review was never intended to be included.

6. The second contention of the learned counsel for the petitioner, inter alia, was that the Motor Vehicles Act and the Workmen's Compensation Act are two different enactments. Section 167 of the Motor Vehicles Act, 1988 makes it clear that if a person is entitled to claim compensation under the Motor Vehicles Act as well as the Workmen's Compensation Act, in that event only one of the proceedings is to be resorted to. Both cannot be pursued. Therefore, one excludes the other. The Workmen's Compensation Act does not provide for any liability of the Insurance Company except as provided under Section 14 of the said Act namely that if there is a contract of Insurance in respect of any liability under the Compensation Act, then after the insured became insolvent the right of the insured against the insurer would vest in the workman. Therefore the provisions of the Motor Vehicles Act cannot be borrowed while deciding the case under the Workmen's Compensation Act.

7. The third contention of the learned counsel for the petitioner was that the application for review has not disclosed any ground for review. Apart from the fact the policy of insurance was neither proved nor any evidence was led fixing the liability of the insurer.

On the other hand learned counsel for the respondents contends that when the Statute is silent about the power of review by an authority exercising quasi judicial jurisdiction it is inherent within such authority, particularly when such authority has all trappings of our court. He further contends that the provisions of the Motor Vehicles Act and the Workmen's Compensation Act are not mutually exclusive. Section 167 of the Act bars the remedy from the two authorities but not application of the provision of one of the other to other or the one. The authority under the Workmen's Compensation Act while deciding the issue may also look into the liability of the insurer under the provisions of Motor Vehicles Act and fix the liability upon the insurer.

8. These questions as to whether in a proceeding under the Workmen's Compensation Act the liability of the insurer can be fixed arose in many cases before different High Courts. There are contrary views of different High Courts. One view precludes the authority from fixing the liability of the insurer while the other view is just opposite. In the case of United India Fire and General Insurance Company v. Joseph Marium, 1979 ACJ 349 Division Bench of Kerala High Court had held that the liability of insurer is only confined to those specified in Sub-section(1) of Section 14 of the Act and except those cases the Commissioner had no jurisdiction to issue any direction to the insurer for payment. Whereas in the case of United India Insurance Company Limited v. Roop Kamvar, 1991 ACJ 74 the Rajasthan High Court had held that it is correct that Section 14 of the Compensation Act specified the liability of the Insurance company but that does not mean that the insurance company is liable to pay compensation only in case the employer becomes insolvent. The insurer is also liable, by reason of the provisions contained in the Motor Vehicles Act and if the person chooses his remedy under the Workmen's Compensation Act the insurer cannot avoid his liability and the authority under the Workmen's Compensation Act may fix the liability of the insurer. Similar view was taken by Orissa High Court in the case of Bhajan Lal Podia v. Baijnath, (1986) 62 Cuttak Law Time, 13. In the case of New India Insurance Company Limited v. Darshani Devi, 1984 Lab I.C. 489 while dissenting from the decision in the case of Oriental Fire and General Insurance Company v. Garim Singh 1973 Lab. I.C. 1066 this Court has held that the liability arising under the Workmen's Compensation Act is necessarily included in the statutory liability which is required by Section 95(1) of the Motor Vehicles Act, 1939 to be covered under the policy of Insurance. Hence the insurer cannot shirk such liability by contending that its liability under the policy was merely a liability under the Motor Vehicles Act and cannot be extended to the liability incurred under the provision of Workmen's Compensation Act. The same view has been expressed in the case of Oriental Fire and General Insurance Company v. Matisburla 1986 ACJ 732 by the Orissa High Court. The Madhya Pradesh High Court has also expressed that Section 14 of the Act is not the only provision imposing the liability on the insurer in the case of New India Insurance Company v. Dujia Bai 1983 ACJ 601 MP; United India Insurance Company Ltd. v. Alphonso, 1988 I LLN 1023; Oriental Fire and General Insurance Company v. Nonibala Devi, 1987 2 TCT 107; National Insurance Company v. Narainan Nair. 58 FIR 1973 Kerala supported the same view. In the case of United India Insurance Company v. Gangadharan Narain, 1986 53 FLR 606 it was held that Section 14 purports to mention the circumstances that the right of the workman shall not be defeated even when employer becomes insolvent and in such event the insurer can be substituted in the place of employer. It does not operate as prohibition against proceeding before the Commissioner involving the insurer, who is liable under the Insurance to discharge the liability of employer to compensate the workman, according to the provisions of the Act. Karnataka High Court in the case of United Fire and General Insurance Company v. Machinery Manufacturer Corporation, 1987 (I) LLN 321 had held that Section 14 of the Act does not enable the Insurance company to avoid its liability under the Policy issued specially, for covering the liability of the workman under the Act on the ground that the insured employer has not become

insolvent or has made composition or scheme of arrangement or being a company winding up proceeding has not commenced. However in the case of National Insurance Company v. Jadumbi, (1985-I-LLJ-102) Mad-hya Pradesh High Court has expressed the contrary view.

9. It appears that the Motor Vehicles Act Clearly lays down that the person entitled to compensation on account of accident arising out of the use of Motor Vehicle may pursue his claim either under the provisions of Motor Vehicles Act or under the Workmen's Compensation Act, but not entitled to have it from the authorities under both the Acts. Therefore the person claiming compensation out of an accident for use of Motor vehicles under the Compensation Act cannot be said to be precluded from claiming the benefit which is available before the other authority. This mutual exclusion clearly implies that the Legislature had never intended that when the claimant in respect of an accident for the use of Motor Vehicles lodges his claim before the authority under the Compensation Act negatives the liability of the insurer under Section 147 of the Motor Vehicles Act, the insurer cannot be concerned under which provision the claim is lodged. The insurance policy does not specify that it will pay compensation only when it is claimed under the provision of Motor Vehicles Act. The liability of the insurance arises out of a contract of insurance be-

tween the insurer and the insured. The liability is the general liability. The same can be invoked even in a Civil suit without the aid of any of the authorities under the said two Acts if it can be invoked without aid of any of these authorities then it cannot be conceived that the insurer will be liable only when a particular procedure is adopted. The liability of the insurer continues to indemnify the insured on account of liability arising out of the contract for insurance. The Insurance company cannot defeat the claim of the claimant simply because the claimant has preferred to espouse his cause under the Compensation Act. The Workmen's compensation Act also does not preclude in specific terms that the insurance company cannot be liable even if the insured is liable under the Motor Vehicles Act. In case compensation is asked for from an employer who might be insolvent and take advantage of insolvency, Section 14 of the Act has been provided to protect the interest of the claimant namely that on account of insolvency of the employer the claimant's claim may not be defeated. This very provision indicates that the Act was concerned with protection of the claim of the claimant. The Act was never concerned as to who would make payment. The Act was always concerned for securing payment of compensation to the claimant if the employer is insured in that event insurer becomes also equally liable to indemnify the employer to the extent of contract of the insurance which can be taken note of. The authority deciding the claim has the jurisdiction to apportion payment or direct as to what amount is to be paid by the insurance and insurer respectively.

10. Furthermore the Motor Vehicles Act 1988 in Section 143 provides that the provisions of Chapter X of the said Act which deals with "no fault liability" shall apply to a claim under the Workmen's Compensation Act resulting from an accident of the nature referred to in Section 140 to the said Act. The provisions of

Chapter X aforesaid has overriding effect on any other law by reason of Section 144 of the said Act. The right to claim compensation under Section 140 is a right in addition to any other right under the provision of the said Act or under any other law. Now chapter X deals with the liability on the principle of fault. Incorporation of Section 167 in the said chapter indicates the intention of the legislature that the claim arising out of the Motor Vehicles Act can also be claimed under the Compensation Act. It is very difficult to conceive that the liability under an insurance policy would be defeated if the claim is lodged under the Compensation Act. Inasmuch as if such a proposition is accepted then it would be very difficult to reconcile the savings provided in Section 141(1) of the Motor Vehicles Act, 1988. It is an established principle of interpretation that a statute has to be given a harmonious construction which leads to a consistent effect. It cannot be conceived that when the benefit is made available under Chapter X of the Motor Vehicles Act even in a claim under the Compensation Act with over-riding effect as provided in Sections 143 and 144 of the said Act the benefit under Chapter XI which is saved under Section 141(1) of the said Chapter would not be available in a claim under the Compensation Act when Section 167 of the said Act provided in Chapter XI leaves the choice or option to the claimant to make such claim in either of the two forums.

11. In order to appreciate the situation we may refer to Section 167 of the Motor Vehicles Act which runs as follows:

"Notwithstanding anything contained in the Workmen's Compensation Act 1923(8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act 1923 the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both".

The Section begins with a non-obstante clause which indicates that a claim which arises under the Motor Vehicles Act and also under the Compensation Act, be espoused under either of the Acts meaning thereby an overriding effect. Without prejudice to the provisions of Chapter X a person entitled to compensation under the Motor Vehicles Act and also under the Compensation Act may claim such compensation under either of the Acts. This clearly presupposes that even despite absence of any provision in the Compensation Act the liability of the insurer as provided in the Motor Vehicles Act can equally be enforced under the Compensation Act.

12. Over and above the compensation is payable on account of a liability arising out of use of a vehicle at a public place. Such liability is covered under the insurance policy by the Insurer. The provision under the Motor Vehicles Act makes it mandatory for owners of vechicles to cover his vehicle under such insurance policy. The compensation is payble for the liability arising out of the use of the vehicle on behalf of the insured who is so indemnified by the insurer by reason of the contract or the policy. It covers the class of person specified

in the policy. It makes little difference if the person affected is an employee of the insured if such class of person is covered by the policy. Therefore the insured does not stand on any different footing when the compensation is claimed under the Compensation Act.

13. Therefore the interpretation of the said provision which ensures to the benefit of the claimant who stands on the receiving end, a weaker side, who should not be allowed to suffer in the trap between the insurer and insured, should be preferred than any other interpretation. Insurance is made compulsory only to facilitate realisation of the claim by the claimant through the insurer. In my view therefore the interpretation given in the preceding paragraph apposite.

14. Now on the Question whether the Workmen's Compensation authority had jurisdiction to review, it appears that the Workmen's Compensation Commissioner exercises quasi judicial jurisdiction having all the trapping of the Court procedure whereof has not been elaborately laid down either under the Act or under the Rules. The absence of specific provision does not debar such authority from dispensation of justice. The authority who is passing the order which is enforceable otherwise cannot be said to ' lack jurisdiction to recall or review its order if occasion so demands in order to do justice. While dispensing justice or exercising quasi judicial jurisdiction unless it has specifically prohibited or barred the power to review its own order inheres in the Tribunal or the authority concerned.

15. Similar view has been expressed in the judgment in the case of Oriental Insurance Company and Fida Ali and Ors., 1995 (25) ALR 532 in which Hon'ble S.R. Singh J. referring to the judgment in the case of P.L. Kakkar Singh v. Praduna Singh, AIR 1970 SC 1273 and S. Nagaraja v. State of Karnaiaka, (1994-I-LLJ-851)(SC) and various other decisions of different High Courts had held that the Tribunal having trappings of the court is empowered to review its own order.

16. In the result it appears that the Commissioner while passing the impugned order cannot be said to have exceeded his jurisdiction in allowing the review application and ordering fresh consideration for ascertaining the liability of the insurer, whether there are material or not for deciding the question namely that the policy was not proved is to be gone into by the Commissioner in terms of the order which directed re-

ceptance of materials for the purpose.

17. In that view of the matter I am not inclined to interfere with the order. The Commissioner shall be at liberty to proceed afresh on the basis of material on record and on the basis of such material as may be produced by either of the parties and to decide the question with regard to the liability of the insurer. The Commissioner's jurisdiction is limited to that extent only namely how far insurer is liable and what amount should be paid by it if it finds the insurer liable on the basis of material already on record or on the material that might be

produced before the Commissioner. The said decision should be decided as early as possible preferably within a period of six months from the date a certified copy of this order is produced before the Commissioner after giving appropriate opportunity to either of the parties.

18. The writ petitions therefore stand disposed of to the above extent. There will be however, no order as to costs."[33]

Gist of case is also pointing out to here, as plain reading of the Hon'ble Court it is made clear that the Hon'ble Court has held that the recall of ex parte order if not barred by law then any application for recall of the order passed in ex-parte has been moved the learned Commissioner of Employee's Compensation Act, 1923 has ample power to recall his own ex parte order even though the order in question on merit same shall be recalled and after providing the opportunity of hearing final order must be passed for securing the ends of justice and any order violating the natural justice same is bad in the eye of law, if any contestant is appeared and moved application the learned Commissioner has to look the bonafide of the aggrieved and filing persons, the applicant of recall showing sufficient cause and also showing bonafide for non appearance before the learned Commissioner and reason is sufficient then it is bounded duty of the Commissioner of the Employee's Compensation Commissioner to entertain the application for recall of his own order and after recalling the same, providing opportunity of hearing to the effected parties, and after proving opportunity of hearing to the effected parties passed the fresh order after considering the version of the parties and also the evidences of the parties.

5.7 Judgement of Hon'ble High Court Allahabad In Case of Syndent (India) Private Limited Vs. Presiding Officer, Industrial Dt of Judgement 25.02.2005 2205 (2) ESC 1239

Allahabad High Court gave finding with regard to Power of Recall of Ex-Parte Award/order vested in Employees Compensation Commissioner law settled by the Hon'ble Allahabad High Court and rectified the confusion with regard to the applicability of 41 of Workmen's Compensation Rule 1924, therefore Hon'ble High Court has held that the ex parte order and award can be recalled by the Commissioner of Empoloyee's Compensation Act 1923, order of the Hon'ble Court is quoted below,

" Hon'ble Justice Rakesh Tiwari, J.

1. Heard Counsel for the parties and perused the record.

2. This writ petition has been filed against the ex parte award dated 31.8.2000 which was published on the notice board on 15.11.2000.

[33] https://indiankanoon.org/doc/1780247/

3. An application for recalling the ex parte award was moved on 14.1.2001 which was rejected on the ground that the Labour Court become functus officio after 30 days of the publication of the award in terms of Section 6-A of the U.P. Industrial Disputes Act, 1947.

4. It appears from the order rejecting the application for setting aside the ex parte award that the Labour Court has held that the summons sent by the Labour Court had been served on the petitioner on 8.5.2000. However, this fact has been denied by the learned Counsel for the petitioner and it is submitted that the summons were never served on the petitioner.

5. The Labour Court has not given any finding when and on whom the summons were served. The Post Master has also not been examined. The question as to who has received the summons has to be decided by the Labour Court.

6. It is not clear from the impugned award that when and on whom the summons were served and there is also no evidence in this regard. The Labour Court without giving any finding as to when and on whom summons had been served and who had served them, proceeded with the case ex parte mechanically concluding that summonses had been served on the employer without verifying this fact first.

7. For the reasons stated above, the writ petition is allowed and the impugned award dated 31.8.2000 is quashed. As a consequence of quashing of the impugned award the recovery certificate issued in pursuance of the impugned ex parte award is also quashed. The matter is remanded back to the Labour Court for decision afresh in the light of the observations made in the body of the judgment. The Labour Court is directed to decide the matter afresh in the light of the observations made in the body of the judgment within a period of six months from the date of production of a certified copy of this order. If necessary, the proceedings may be held on day-to-day basis under Rule 12(4) of the U.P. Industrial Disputes Rules, 1957 in view of the judgment rendered in Writ Petition No. 17602 of 1990 (Basant Lal v. U.P. State Roadways Transport Corporation and Ors.) reported in (2003) 1 UPLBEC 154."[34]

That the Hon'ble Justice Rakesh Tiwari J, has given clearcut finding for recall of ex-parte order, and if the ex parte order is on merit, there is no matter it can be recalled and there is no prohibition for recalling the same, the order ex-parte can be recalled if the affected parties has appeared and file application and requested for recall the authorities are bonded duty to provide the natural justice and right to heard is also fundamental right of the affected parties.

5.8 Judgement of Hon'ble High Court Allahabad In Case In Case of Raj Bahadur Vs. Presiding Officer, Labour Dt of Judgement 08.01.2010 Writ C No. 575 of 2010

[34] www.indiankanoon.org/doc/12663/

Allahabad High Court giving finding Power of Recall of Ex-Parte Award / order vested in the Commissioner, in the supra case, the Hon'ble Court has dismissed the writ petition filed by Raj Bahadur against the order of Labor Court dt. 15.05.2009 against the recall of ex-parte order, main ground has been taken in the writ petition, ground is that the Labour Court has no power to recall the ex parte order, the Hon'ble Court has rejected the plea of petitioner and dismissed the writ petition by holing that ex – parte order can be recall, part of judgement is reproduce here as under,

"The petitioner before this Court is aggrieved by the order of the Presiding Officer, Labour Court dated 15.05.2009 passed in Adjudication Case No. 61 of 2006. By means of the said order, the Labour Court has recalled its earlier ex parte award on an application made by the employers after recording that the said application has been filed within time and the earlier order was ex parte. Having heard learned counsel for the petitioner and having examined the records of the present writ petition, I am of the considered opinion that the order has the effect of permitting the employers to have their say in the matter. Such orders are in the interest of substantial justice and have the effect of matters being adjudicated on merits after contest between the parties instead of being permitted to be adjudicated ex parte. Such orders do not warrant any interference under Article 226 of the Constitution of India. Writ petition is dismissed. However in the facts of the present case it is provided that the Labour Court shall endeavour to decide the Adjudication Case No. 61 of 2006 at the earliest possible, without granting any unnecessary adjournment to either of the parties, in any case, within four months from the date a certified copy of this order is filed before the Presiding Officer, Labour Court-I, Kanpur Nagar, Kanpur.[35]"

The power of recall of ex-parte order is fully vested in the hands of Employee's Compensation of Commissioner as discussed above (supra) by the Hon'ble Court.

5.9 Judgement of Hon'ble High Court Allahabad In Case of M/S Universal Cylinders Limited Vs. The Presiding Officer, Labour Dt of Judgement 13.01.2020 Writ C No. 15333 of 2019

Allahabad High Court giving finding Power of Recall of Ex-Parte Award / order vested in the passing authority, the Act of Employee's Compensation Act, 1923 is not provided but the rule it self providing that the recalling power is vested in the authority, the present case ex parte order has been passed by the authority, against the ex party order recall application has been filed same is dismissed vide order dt. 11.06.2018 by the Labour Court, against rejection of application of recall writ petition has been filed the Hon'ble Writ Court in case of MS Universal (supra) allowed the recall application dt. 11.6.2008 and quashed the exparte award dt. 20.12.20217 vide order dt. 13.01.2020, copy of the order is reproduced herewith as under,

[35] www.allahabadhighcourt.in

"By means of instant petition, the petitioner has called in question the order dated 14.2.2019 passed by Presiding Officer, Labour Court II, U.P. Kanpur rejecting the application of the petitioner praying for setting aside the exparte award dated 20.12.2017 (published on the notice board on 19.5.2018) in Adjudication Case No.33 of 2015.

The background facts leading to the instant petition are that respondent no.2 raised an industrial dispute alleging that he was appointed on the post of Mistri/Mechanic by respondent no.3 in the month of February, 1991; that he worked till 31.10.2014; that his service was illegally terminated without passing any order in writing on 1.11.2014. The application filed in this regard by respondent no.2 dated 13.3.2015 was registered as C.P. Case No.47 of 2015. On 10.8.2015, respondent no.2 sought impleadment of the petitioner in C.P. Case No.47 of 2015. Since the conciliation proceedings did not yield any result, therefore, the dispute was referred under Section 4-K for adjudication by the Labour Court and it came to be registered as Adjudication Case No.33 of 2015. The petitioner was represented by Sri Gyaneshwar Mishra. According to the petitioner, Sri Gyaneshwar Mishra, due to his personal problems, could not attend the case on regular basis and later, abstained from appearing in the case without any information to the petitioner, resulting in an exparte award dated 20.12.2017 being passed against it. The Labour Court directed for reinstatement of respondent no.2 with continuity of service and full back wages. According to the petitioner, it came to know of the exparte award when copy of the same was received by it on 26.5.2018. On 11.6.2018, it moved an application for setting aside the exparte award alongwith affidavit of Manager (Operation). The application was opposed by respondent no.2. The Labour Court by impugned order rejected the said application holding that the explanation furnished for non-appearance is not satisfactory and also on the ground that under Rule 16 (2) of the Rules framed under the Act, an application praying for setting aside of exparte award could be filed only within ten days from the date of publication of the award. In other words, the view taken is that after expiry of the time prescribed under Rule 16 (2), the award had become enforceable rendering the Labour Court functus officio to entertain or decide any application.

Learned counsel for the petitioner submitted that in the first place the Labour Court has committed a manifest illegality in ignoring cogent explanation offered by the petitioner entitling it to a hearing and case being decided on merits. In support of the said submission, he has placed reliance on the judgement of the Apex Court in M.K. Prasad Vs. R. Arumugam, 2001 (3) AWC 2395. In addition, it is urged that the law that after publication of award and expiry of the prescribed period, the award becomes enforceable rendering the Labour Court/Tribunal functus officio is no longer good law in view of the recent decision of the Supreme Court in Haryana Suraj Malting Ltd. vs. Phool Chand, (2018) (16) SCC 567.

On the other hand, learned counsel for the respondent workman submitted that the Labour Court has rightly discarded the explanation furnished by the petitioner for its non-appearance when the matter was taken up for

hearing. He further submitted that the other reasoning given by the Labour Court that the application was not entertainable in view of Rule 16 (2), as it was filed beyond ten days from the date of passing of the award, is also perfectly legal and valid.

The judgement of the Supreme Court in Haryana Suraj Malting Ltd. is by a Larger Bench of Three Judges resolving divergent views in Sangham Tape Company Vs. Hans Raj, (2005) 9 SCC 331 and Radhakrishna Mani Tripathi Vs. L.H. Patel, (2009) 2 SCC 81. The reference to the Larger Bench was made for answering the following question:-

"1. Whether the Industrial Tribunal/Labour Court becomes functus officio after 30 days of the pronouncement/publication of the award and loses all powers to recall an ex parte award on an application made by the aggrieved party after 30 days from the date of pronouncement/publication of the award is the question that once again arises for consideration in these cases."

It is pertinent to note paras 2 and 3 of the referring order to have an insight into the background in which two conflicting views were taken:-

"2. It may be noted that on this question two Division Bench decisions have taken apparently conflicting views. In Sangham Tape Co. v. Hans Raj a two-Judge Bench held and observed that an application for recall of an ex parte award may be entertained by the Industrial Tribunal/Labour Court only in case it is filed before the expiry of 30 days from the date of pronouncement/ publication of the award. A contrary view was taken in Radhakrishna Mani Tripathi v. L.H. Patel to which one of us (Aftab Alam, J.) was a party.

3. In both cases, that is to say, Sangham Tape Co. and Radhakrishna Mani Tripathi, the Court referred to and relied upon the earlier decisions in Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal and Anil Sood v. Labour Court but read and interpreted those two decisions completely differently."

The Larger Bench of the Supreme Court, while answering the reference, took into consideration virtually all previous judgements on the point and thereafter observed as follows:-

"31. Therefore, all the decisions hereinabove noted by us referred to Grindlays (supra). On a close reading of paragraph-14 of Grindlays (supra), in the background of the analysis of law under paragraphs-10 to 13, it is difficult for us to comprehend that the power to set aside an ex parte award is not available to a Labour Court/Industrial Tribunal. On the principles of natural justice, and on a purposive interpretation of the scheme of the Act and Rules, we find it difficult also to discern that the ratio of the decision in Grindlays (supra), is what is stated in paragraph-14 to the extent that an application for setting aside an ex parte award has to be filed within 30 days of publication of the award. On the contrary, the ratio in Grindlays (supra) is that the

Tribunal can exercise its ancillary and incidental powers, on the broader principles contained under Order IX Rule 13 of the CPC. No doubt, the Limitation Act, 1963 is not applicable to the Labour Court/Tribunal."

Thereafter, the Larger Bench laid down its conclusions in paragraphs 34, 35 and 37 of the Law Report as follows:-

"34. In case a party is in a position to show sufficient cause for its absence before the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

35. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays [Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal, 1980 Supp SCC 420 : 1981 SCC (L&S) 309] , an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

37. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent."

It is thus well settled now that the Labour Court/Industrial Tribunal, in exercise of its ancillary and incidental powers, is competent to entertain an application to set aside an exparte order/ award and the said power cannot be circumscribed by any limitation. The ratio in Grindlays Bank Ltd. Vs. Central Govt. Industrial Tribunal,

1980 Supp SCC 420, as interpreted by the Larger Bench is that the Tribunal can exercise the said power on the broader principles contained under Order 9 Rule 13 CPC. The provisions of the Limitation Act, 1963 do not apply to the Labour Court/ Tribunal. In case a party is in position to show sufficient cause for its absence before the Labour Court/Tribunal, it is competent to entertain such application and exercise its judicious discretion to find out whether the party has approached within reasonable time and whether sufficient cause has been shown or not. Merely because an award has become enforceable upon expiry of 30 days from the date of its publication would not mean that it has also become binding on the party seeking recall of the exparte order/award. For an award to become binding, it should have been passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. The judgment in Suraj Malting was rendered in context of the Central Act (Industrial Disputes Act, 1947). The instant Act applicable in U.P. contains pari materia provisions, some of which are relevant to note.

Section 5-C (3) invests the Labour Court/Tribunal with the same powers as are vested in a Civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of following matters, namely:-

“(a) enforcing the attendance of any person and examining him on oath or affirmation or otherwise;

(b) requiring the discovery and production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) inspection of any property or thing including machinery concerning any such dispute; and

(e) in respect of such other matters as may be prescribed;”

Section 6 of the Act lays down the manner in which award is to be given and published. Sub-section (3) provides that every award shall within a period of 30 days of its receipt by the State Government be published in such manner as the State Government thinks fit. Under sub-section (4), the State Government has been invested with power to a limited extent and upon factors mentioned thereunder, to remit the award for reconsideration. An award published as per provisions of Section 6-A has been given

finality subject to clerical or arithmetical errors being corrected, in which case, again the procedure relating to publication of award has to be followed. Section 6-A provides for commencement of the award. The relevant part of Section 6-A is as follows:-

"6-A. Commencement of the award. – (1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 6:"

Section 6-D is also worth noticing, which reads thus:-

"6-D. Commencement and conclusion of proceeding. – Proceedings before a Labour Court or Tribunal shall be deemed to have commenced on the date of reference of a dispute to adjudication, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 6-A."

The State Government has framed Rules in exercise of power under Section 23 of the Act. Rule 16 of the U.P. Industrial Disputes Rules, 1957 framed by the State Government, on which reliance has been placed in the impugned order, reads thus:-

"16. Labour Court or Tribunal or Arbitrator may proceed ex-parte. – (1) If, on the date fixed or on any other date to which the hearing maybe adjourned, any party to the proceedings before the Labour Court or Tribunal or an Arbitrator is absent, though duly served with summons or having the notice of date of hearing, the Labour Court or Tribunal or the Arbitrator, as the case may be, may proceed with the case in his absence and pass such order as it may deem fit and proper.

(2) The Labour Court, Tribunal or an Arbitrator may set aside the order passed against the party in his absence, if within ten days of such order, the party applies in writing for setting aside such order and shows sufficient cause for his absence. The Labour Court, Tribunal or an Arbitrator may require the party to file an affidavit, setting the cause of absence. As many copies of the application and affidavit, if any, shall be filed by the party concerned as there are persons on the opposite side. Notice of the application shall be given to the opposite parties before setting aside the order."

Again, under Rule 21, the Labour Courts/Tribunals have been invested with the power of a civil court in respect of discovery and inspection; granting of adjournment; reception of evidence taken on affidavit.

Rule 16 is the source of power of the Labour Court/Tribunal to proceed with the case in absence of a party duly served with summons or having notice of date of hearing. It has also been conferred power to set aside the order passed against the party in his absence provided sufficient cause is shown for absence. The Rule provides that such application has to be filed within 10 days from the date of passing of the order. The said

time limit, in my opinion, is not an embargo placed upon the Labour Court/Tribunal to entertain application even if the delay in filing such application is sufficiently explained. If the application is filed within 10 days, the party will not be asked to explain why it had not approached earlier, but it has only to show sufficient cause for its absence. However, after 10 days, the party seeking setting aside of an exparte order, apart from showing sufficient cause for non-appearance, will also have to furnish explanation for not filing application within 10 days. This is all that the provision means in prescribing a time limit for filing the application. Any other interpretation would be contrary to the broad principles laid down by the Supreme Court in Suraj Malting and would render the provision illegal and ultra vires. The above interpretation, while obviating the need to strike down the provision, would offer a practical solution and also subserve the ends of justice. Take for instance a case where a party is not duly served with summons and comes to know of the exparte award or the order to proceed exparte after expiry of 10 days. In such a case, if the time limit prescribed under Rule 16 (2) is held to be sacrosanct, the Labour Court/Tribunal would stand denuded of its power to set aside the exparte order/award. It would be against basic tenets of jurisprudence that dispute between the parties should be decided after due service of notice and opportunity of hearing to both the sides. Rule 16 (2) was thus not an impediment in the way of the Labour Court in entertaining the application filed by the petitioner for setting aside the exparte award or deciding the same on merits. The view taken to the contrary is manifestly illegal.

In the instant matter, it is worth noticing that the award was published on 19.5.2018 and as per Section 6-A, the award becomes enforceable on the expiry of 30 days from the date of its publication. The application was filed on 11.6.2018 i.e. before expiry of 30 days from the date of publication of the award or its becoming enforceable under law. In such view of the matter, even otherwise, the application having been filed before the award became enforceable could not be thrown out on the ground that it was filed beyond the period prescribed under Rule 16 (2).

Coming to the second aspect as to whether the Labour Court/Tribunal committed any error in declining to accept the explanation offered by the petitioner for its non-appearance, it is worthwhile to note the exact explanation offered by the petitioner for its non-appearance. The case taken by the petitioner in this regard was that it came to know of exparte award on 26.5.2018. Its Manager Mahendra Singh Shekhawat (who filed affidavit in support of the application) met the authorised representative Sri Gyaneshwar Mishra. At that stage, he informed the Manager that since 5th July, 2017 he had to make frequent visits to his home district Jaunpur on account of personal work and that he had deputed his junior to do pairvi in the case, but who did not discharge the responsibility properly. Thereafter, the Manager requested the authorised representative to take appropriate steps so that the matter is decided on merits, but he expressed his inability and said that he will not be able to take any step in this regard till August, 2018 as he will remain busy with his personal work. Thereafter, the petitioner Company approached another person to act as its representative and got the

application filed without any further delay on 11.6.2018. The Labour Court has observed that the petitioner has offered a confusing explanation and in case it was having knowledge that its authorised representative was visiting his home district on regular basis, it ought to have authorised another person to act on its behalf. Evidently, the Tribunal has completely misread the explanation offered by the petitioner. In M.K. Prasad (supra) where also explanation offered was that the counsel did not appear after a particular date to contest the case without any information to the party, the Supreme Court has observed thus:-

"10. In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex-parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable…"

In my opinion, it is a fit case where the explanation offered has to be accepted in the interest of justice. While at the same time, the inconvenience cause to the respondent workman could be compensated in terms of cost.

Accordingly, the application dated 11.6.2018 filed by the petitioner for setting aside exparte award is allowed. The exparte award dated 20.12.2017 is set aside subject to payment of a cost of Rs.5000/- to the respondent-workman within three weeks from today. The Tribunal shall now decide the matter afresh, after providing opportunity of hearing to both the sides. The writ petition stands allowed accordingly."[36]

5.9 M/s Universal Cylinders Limited Vs. The Presiding Officer Writ C No. 15333 of 2019 31.01.2020 Allahabad Court case study regarding power of Commissioner Employee's Compensation Act, 1923

That the Hon'ble Kerala High Court has given finding with regard to the power of Employee's Compensation, Act, 1923 of Commissioner, the issues with regard to the power of Compensation Commissioner is under debateable and several trail Court and various High Court has given mis interpretation, with regard to the power of the Employee's Compensation Commissioner, whether having power to recall of his own ex parte order or not, the issues has settled by Hon'ble Allahabad High Court in Case of Ms Universal Cylinders Limited (supra) the Hon'ble Justice Manoj Kumar Gupta J, has giving finding which is as under,

" By means of instant petition, the petitioner has called in question the order dated 14.2.2019 passed by Presiding Officer, Labour Court II, U.P. Kanpur rejecting the application of the petitioner praying for setting

[36] www.allahabadhighcourt.in

aside the exparte award dated 20.12.2017 (published on the notice board on 19.5.2018) in Adjudication Case No.33 of 2015.

The background facts leading to the instant petition are that respondent no.2 raised an industrial dispute alleging that he was appointed on the post of Mistri/Mechanic by respondent no.3 in the month of February, 1991; that he worked till 31.10.2014; that his service was illegally terminated without passing any order in writing on 1.11.2014. The application filed in this regard by respondent no.2 dated 13.3.2015 was registered as C.P. Case No.47 of 2015. On 10.8.2015, respondent no.2 sought impleadment of the petitioner in C.P. Case No.47 of 2015. Since the conciliation proceedings did not yield any result, therefore, the dispute was referred under Section 4-K for adjudication by the Labour Court and it came to be registered as Adjudication Case No.33 of 2015. The petitioner was represented by Sri Gyaneshwar Mishra. According to the petitioner, Sri Gyaneshwar Mishra, due to his personal problems, could not attend the case on regular basis and later, abstained from appearing in the case without any information to the petitioner, resulting in an exparte award dated 20.12.2017 being passed against it. The Labour Court directed for reinstatement of respondent no.2 with continuity of service and full back wages. According to the petitioner, it came to know of the exparte award when copy of the same was received by it on 26.5.2018. On 11.6.2018, it moved an application for setting aside the exparte award alongwith affidavit of Manager (Operation). The application was opposed by respondent no.2. The Labour Court by impugned order rejected the said application holding that the explanation furnished for non-appearance is not satisfactory and also on the ground that under Rule 16 (2) of the Rules framed under the Act, an application praying for setting aside of exparte award could be filed only within ten days from the date of publication of the award. In other words, the view taken is that after expiry of the time prescribed under Rule 16 (2), the award had become enforceable rendering the Labour Court functus officio to entertain or decide any application.

Learned counsel for the petitioner submitted that in the first place the Labour Court has committed a manifest illegality in ignoring cogent explanation offered by the petitioner entitling it to a hearing and case being decided on merits. In support of the said submission, he has placed reliance on the judgement of the Apex Court in M.K. Prasad Vs. R. Arumugam, 2001 (3) AWC 2395. In addition, it is urged that the law that after publication of award and expiry of the prescribed period, the award becomes enforceable rendering the Labour Court/Tribunal functus officio is no longer good law in view of the recent decision of the Supreme Court in Haryana Suraj Malting Ltd. vs. Phool Chand, (2018) (16) SCC 567.

On the other hand, learned counsel for the respondent workman submitted that the Labour Court has rightly discarded the explanation furnished by the petitioner for its non-appearance when the matter was taken up for hearing. He further submitted that the other reasoning given by the Labour Court that the application was not entertainable in view of Rule 16 (2), as it was filed beyond ten days from the date of passing of the award, is also perfectly legal and valid.

The judgement of the Supreme Court in Haryana Suraj Malting Ltd. is by a Larger Bench of Three Judges resolving divergent views in Sangham Tape Company Vs. Hans Raj, (2005) 9 SCC 331 and Radhakrishna Mani Tripathi Vs. L.H. Patel, (2009) 2 SCC 81. The reference to the Larger Bench was made for answering the following question:-

"1. Whether the Industrial Tribunal/Labour Court becomes functus officio after 30 days of the pronouncement/publication of the award and loses all powers to recall an ex parte award on an application made by the aggrieved party after 30 days from the date of pronouncement/publication of the award is the question that once again arises for consideration in these cases."

It is pertinent to note paras 2 and 3 of the referring order to have an insight into the background in which two conflicting views were taken:-

"2. It may be noted that on this question two Division Bench decisions have taken apparently conflicting views. In Sangham Tape Co. v. Hans Raj a two-Judge Bench held and observed that an application for recall of an ex parte award may be entertained by the Industrial Tribunal/Labour Court only in case it is filed before the expiry of 30 days from the date of pronouncement/ publication of the award. A contrary view was taken in Radhakrishna Mani Tripathi v. L.H. Patel to which one of us (Aftab Alam, J.) was a party.

3. In both cases, that is to say, Sangham Tape Co. and Radhakrishna Mani Tripathi, the Court referred to and relied upon the earlier decisions in Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal and Anil Sood v. Labour Court but read and interpreted those two decisions completely differently."

The Larger Bench of the Supreme Court, while answering the reference, took into consideration virtually all previous judgements on the point and thereafter observed as follows:-

"31. Therefore, all the decisions hereinabove noted by us referred to Grindlays (supra). On a close reading of paragraph-14 of Grindlays (supra), in the background of the analysis of law under paragraphs-10 to 13, it is difficult for us to comprehend that the power to set aside an ex parte award is not available to a Labour Court/Industrial Tribunal. On the principles of natural justice, and on a purposive interpretation of the scheme of the Act and Rules, we find it difficult also to discern that the ratio of the decision in Grindlays (supra), is what is stated in paragraph-14 to the extent that an application for setting aside an ex parte award has to be filed within 30 days of publication of the award. On the contrary, the ratio in Grindlays (supra) is that the Tribunal can exercise its ancillary and incidental powers, on the broader principles contained under Order IX Rule 13 of the CPC. No doubt, the Limitation Act, 1963 is not applicable to the Labour Court/Tribunal."

Thereafter, the Larger Bench laid down its conclusions in paragraphs 34, 35 and 37 of the Law Report as follows:-

"34. In case a party is in a position to show sufficient cause for its absence before the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the

sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

35. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays [Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal, 1980 Supp SCC 420 : 1981 SCC (L&S) 309] , an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

37. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent."

It is thus well settled now that the Labour Court/Industrial Tribunal, in exercise of its ancillary and incidental powers, is competent to entertain an application to set aside an exparte order/ award and the said power cannot be circumscribed by any limitation. The ratio in Grindlays Bank Ltd. Vs. Central Govt. Industrial Tribunal, 1980 Supp SCC 420, as interpreted by the Larger Bench is that the Tribunal can exercise the said power on the broader principles contained under Order 9 Rule 13 CPC. The provisions of the Limitation Act, 1963 do not apply to the Labour Court/ Tribunal. In case a party is in position to show sufficient cause for its absence before the Labour Court/Tribunal, it is competent to entertain such application and exercise its judicious discretion to find out whether the party has approached within reasonable time and whether sufficient cause has been shown or not. Merely because an award has become enforceable upon expiry of 30 days from the date of its publication would not mean that it has also become binding on the party seeking recall of the exparte order/award. For an award to become binding, it should have been passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its

non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. The judgment in Suraj Malting was rendered in context of the Central Act (Industrial Disputes Act, 1947). The instant Act applicable in U.P. contains pari materia provisions, some of which are relevant to note.

Section 5-C (3) invests the Labour Court/Tribunal with the same powers as are vested in a Civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of following matters, namely:-

"(a) enforcing the attendance of any person and examining him on oath or affirmation or otherwise;

(b) requiring the discovery and production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) inspection of any property or thing including machinery concerning any such dispute; and

(e) in respect of such other matters as may be prescribed;"

Section 6 of the Act lays down the manner in which award is to be given and published. Sub-section (3) provides that every award shall within a period of 30 days of its receipt by the State Government be published in such manner as the State Government thinks fit. Under sub-section (4), the State Government has been invested with power to a limited extent and upon factors mentioned thereunder, to remit the award for reconsideration. An award published as per provisions of Section 6-A has been given

finality subject to clerical or arithmetical errors being corrected, in which case, again the procedure relating to publication of award has to be followed. Section 6-A provides for commencement of the award. The relevant part of Section 6-A is as follows:-

"6-A. Commencement of the award. – (1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 6:"

Section 6-D is also worth noticing, which reads thus:-

"6-D. Commencement and conclusion of proceeding. – Proceedings before a Labour Court or Tribunal shall be deemed to have commenced on the date of reference of a dispute to adjudication, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 6-A."

The State Government has framed Rules in exercise of power under Section 23 of the Act. Rule 16 of the U.P. Industrial Disputes Rules, 1957 framed by the State Government, on which reliance has been placed in the impugned order, reads thus:-

"16. Labour Court or Tribunal or Arbitrator may proceed ex-parte. – (1) If, on the date fixed or on any other date to which the hearing maybe adjourned, any party to the proceedings before the Labour Court or Tribunal or an Arbitrator is absent, though duly served with summons or having the notice of date of hearing, the Labour

Court or Tribunal or the Arbitrator, as the case may be, may proceed with the case in his absence and pass such order as it may deem fit and proper.

(2) The Labour Court, Tribunal or an Arbitrator may set aside the order passed against the party in his absence, if within ten days of such order, the party applies in writing for setting aside such order and shows sufficient cause for his absence. The Labour Court, Tribunal or an Arbitrator may require the party to file an affidavit, setting the cause of absence. As many copies of the application and affidavit, if any, shall be filed by the party concerned as there are persons on the opposite side. Notice of the application shall be given to the opposite parties before setting aside the order."

Again, under Rule 21, the Labour Courts/Tribunals have been invested with the power of a civil court in respect of discovery and inspection; granting of adjournment; reception of evidence taken on affidavit.

Rule 16 is the source of power of the Labour Court/Tribunal to proceed with the case in absence of a party duly served with summons or having notice of date of hearing. It has also been conferred power to set aside the order passed against the party in his absence provided sufficient cause is shown for absence. The Rule provides that such application has to be filed within 10 days from the date of passing of the order. The said time limit, in my opinion, is not an embargo placed upon the Labour Court/Tribunal to entertain application even if the delay in filing such application is sufficiently explained. If the application is filed within 10 days, the party will not be asked to explain why it had not approached earlier, but it has only to show sufficient cause for its absence. However, after 10 days, the party seeking setting aside of an exparte order, apart from showing sufficient cause for non-appearance, will also have to furnish explanation for not filing application within 10 days. This is all that the provision means in prescribing a time limit for filing the application. Any other interpretation would be contrary to the broad principles laid down by the Supreme Court in Suraj Malting and would render the provision illegal and ultra vires. The above interpretation, while obviating the need to strike down the provision, would offer a practical solution and also subserve the ends of justice. Take for instance a case where a party is not duly served with summons and comes to know of the exparte award or the order to proceed exparte after expiry of 10 days. In such a case, if the time limit prescribed under Rule 16 (2) is held to be sacrosanct, the Labour Court/Tribunal would stand denuded of its power to set aside the exparte order/award. It would be against basic tenets of jurisprudence that dispute between the parties should be decided after due service of notice and opportunity of hearing to both the sides. Rule 16 (2) was thus not an impediment in the way of the Labour Court in entertaining the application filed by the petitioner for setting aside the exparte award or deciding the same on merits. The view taken to the contrary is manifestly illegal.

In the instant matter, it is worth noticing that the award was published on 19.5.2018 and as per Section 6-A, the award becomes enforceable on the expiry of 30 days from the date of its publication. The application was filed on 11.6.2018 i.e. before expiry of 30 days from the date of publication of the award or its becoming enforceable under law. In such view of the matter, even otherwise, the application having been filed before

the award became enforceable could not be thrown out on the ground that it was filed beyond the period prescribed under Rule 16 (2).

Coming to the second aspect as to whether the Labour Court/Tribunal committed any error in declining to accept the explanation offered by the petitioner for its non-appearance, it is worthwhile to note the exact explanation offered by the petitioner for its non-appearance. The case taken by the petitioner in this regard was that it came to know of exparte award on 26.5.2018. Its Manager Mahendra Singh Shekhawat (who filed affidavit in support of the application) met the authorised representative Sri Gyaneshwar Mishra. At that stage, he informed the Manager that since 5th July, 2017 he had to make frequent visits to his home district Jaunpur on account of personal work and that he had deputed his junior to do pairvi in the case, but who did not discharge the responsibility properly. Thereafter, the Manager requested the authorised representative to take appropriate steps so that the matter is decided on merits, but he expressed his inability and said that he will not be able to take any step in this regard till August, 2018 as he will remain busy with his personal work. Thereafter, the petitioner Company approached another person to act as its representative and got the application filed without any further delay on 11.6.2018. The Labour Court has observed that the petitioner has offered a confusing explanation and in case it was having knowledge that its authorised representative was visiting his home district on regular basis, it ought to have authorised another person to act on its behalf. Evidently, the Tribunal has completely misread the explanation offered by the petitioner. In M.K. Prasad (supra) where also explanation offered was that the counsel did not appear after a particular date to contest the case without any information to the party, the Supreme Court has observed thus:-

"10. In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex-parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable…"

In my opinion, it is a fit case where the explanation offered has to be accepted in the interest of justice. While at the same time, the inconvenience cause to the respondent workman could be compensated in terms of cost. Accordingly, the application dated 11.6.2018 filed by the petitioner for setting aside exparte award is allowed. The exparte award dated 20.12.2017 is set aside subject to payment of a cost of Rs.5000/- to the respondent-workman within three weeks from today. The Tribunal shall now decide the matter afresh, after providing opportunity of hearing to both the sides.

The writ petition stands allowed accordingly.[37] "

[37] www.allahabadhighcourt.in

5.10 Judgement of Hon'ble High Court Madras In Case of Kolandhayee Vs. The Deputy Commissioner of Labour Dt of Judgement 19.04.2010 W.A. No. 2505 of 2001

That on the point of ex parte order not only Allahabad – Lucknow High Court has given pronouncement but in Madras High Court giving finding Power of Recall of Ex-Parte Award / order vested in the in the authority, and order of ex parte having no value if the contesting parties have appeared and file recall application before the competent authority, therefore recalling of the order of ex parte is vested in the power of the authority because providing opportunity of hearing is the fundamental right of the affected parties in the case of Kolandhayee Vs. The Deputy Commissoner of Labour (Commissioner for Workmen's Compensation Act) and another) the Hon'ble Court has given clear cut finding with regard to recall of ex parte order and providing the opportunity of hearing, the order is reproduce here as under,

" Judgment of the Court was delivered by M.Venugopal, J.

The Appellant/2nd Respondent has filed this Writ Appeal as against the order of the Learned Single Judge dated 18.02.2000 in W.P.No.19515 of 1992.

2.The Learned Single Judge, while passing orders in the Writ Petition filed by the Appellant/2nd Respondent has inter alia observed that 'there is no provision in the Act to entertain such an application. The order of the Authority is far in excess of its jurisdiction. The Authority having some quasi judicial functions should exercise it judicially. The order passed by the 1st Respondent cannot be sustained on any ground. There are errors apparent on the face of records, etc. and resultantly, allowed the Writ petition without costs.'

3.According to the Learned counsel for the Appellant/2nd Respondent, the Appellant's husband died while at work and the Learned Single Judge wrongly assumed that there was no application filed for condonation of delay, but the candid fact was that the Appellant indeed filed a set aside application within 30 days on 19.08.1991, since I.A.No.6 of 1991 was dismissed for default only on 24.07.1991, there was no necessity for filing an application for condonation of delay in filing the restoration petition W.C.I.A.No.25 of 1991.

4.It is the further contention of the Learned counsel for the Appellant/2nd Respondent that the Learned Single Judge had not appreciated the fact that the 1st Respondent/Authority had passed a valid and considered order in W.C.I.A.No.25 of 1991 and there was no necessity to interfere with the same inasmuch as the claim was to be decided on merits and therefore, prays for allowing the Writ appeal in the interests of justice.

5.In response, the Learned counsel for the 2nd Respondent/Petitioner/ Management supports the order the Learned Single Judge in allowing the Writ petition by setting aside the order passed by the 1st Respondent/Authority and prays that the said order may not be interfered with at this stage of the appeal.

6.The 2nd Respondent/Writ Petitioner in the Writ petition had taken a specific stand that the 1st Respondent/Authority had not assigned any reasons, much less acceptable reasons for setting aside the order passed in W.C.I.A.No.6 of 1991 on 24.07.1991 and restoring the W.C.No.101 of 1989 and in fact, the 1st

Respondent/Authority had no jurisdiction to entertain I.A.No.25 of 1991 after dismissing I.A.No.6 of 1991, which was filed by the Learned counsel for the Appellant/2nd Respondent on 18.04.1991.

7.The substance of the stand of the 2nd Respondent/Petitioner is that the 1st Respondent/Authority had no jurisdiction to pass orders to set aide the Ex-parte Order and also restoring the application which was dismissed for default and the suit does not contemplate such a position and in fact, the Appellant/ 2nd Respondent had not filed any application for condonation of delay in projecting the application to set aide the Ex-parte Order and in the absence of such an application, the 1st Respondent/Authority ought not to have entertained the subsequent application.

8.Also, it is the plea of the 2nd Respondent/Management that the accident took place in the year 1977 and the application claiming compensation was filed in the year 1989, after a huge delay of 12 years and there was no acceptable reasons furnished on the side of the Appellant/2nd Respondent to condone the same and this would point out that the Appellant/2nd Respondent was never diligent and pursuing the remedy of claiming the compensation.

9.It is to be noted that the Appellant/2nd Respondent filed I.A.No.25 of 1991 before the 1st Respondent/Authority only on 19.08.1991 (after the dismissal of I.A.No.6 of 1991) filed for restoration of appeal viz., W.C.No.101 of 1989, which was dismissed for default on 18.03.1991. In reality, the said application was filed after a gap of 5 months.

10.That apart, the order of the 1st Respondent/Authority dated 26.05.1992 in allowing the I.A.No.25 of 1991 filed by the Appellant/2nd Respondent was a non-speaking order and no satisfactory reasons were furnished to reject the contentions of the 2nd Respondent/Writ Petitioner/Management and therefore, the same was allowed to be set aside.

11.The stand of the Appellant/2nd Respondent in the Writ petition was that her husband was employed as a godown worker with the 2nd Respondent/Petitioner and in the course of his employment, he died on 23.03.1987 and this aspect could not be re-agitated since the same was earlier raised before this Court in W.P.No.3741 of 1990 and by an order dated 02.11.1990 in the aforesaid Writ petition, a clear finding was given by this Court in favour of the Appellant/2nd Respondent.

12.Continuing further, it is the stand of the Appellant/2nd Respondent that the application, oral evidence and the order of the 1st Respondent/Authority dated 26.05.1991 unerringly pointed out her non-appearance and her counsel's absence were bonafide and therefore, she was entitled to contest the matter, since she being an illiterate person, as per finding rendered by the 1st Respondent/Authority.

13.At this juncture, it is useful for this Court to refer to the I.A.No.25 of 1991 filed by the Appellant/2nd Respondent wherein she had among other things stated that she was suffering from illness and not able to move and appear before the 1st Respondent/Authority on the previous hearing dates on 11.12.1990, 08.01.1991 and finally, it was posted to 18.03.1991. Moreover, her counsel suffered a heart-attack and he was admitted into the hospital for the last few months and therefore, could not made other arrangements to represent

the matter before the 1st Respondent/Authority and also that she was ill and could not appear on 18.03.1991 and as such I.A.No.25 of 1991 was dismissed for default on 18.03.1991.

14.As a matter of fact, though the Appellant/2nd Respondent could not contact her counsel, she informed about her illness and her inability to attend the Court on 18.03.1991 and her counsel filed an application to set aside the Ex-parte Order and prayed for restoration of the same and to decide the case on merits on 18.04.1991 and the said application taken on filed as I.A.No.6 of 1991 and was posted to 20.05.1991 and adjourned to 28.05.1991 and finally to 24.07.1991.

15.Because of the fact that the Appellant/2nd Respondent was suffering from Jaundice and her counsel again suffered an Heart Attack both of them could not be present on 24.07.1991 and as such the I.A.No.6 of 1991 was dismissed for default and therefore, had prayed for restoration of I.A.No.6 of 1991 and W.C.No.101 of 1981 to file for deciding the same on merits.

16.The 2nd Respondent/Writ Petitioner in the counter had averred that numbering of the application inter-locutory as well as the present application were not at all maintainable and only option for the Appellant/2nd Respondent was to file an appeal as also that reasons adduced by the Appellant/2nd Respondent were not true and delay was not explained and indeed in the Writ petition filed by the Management, direction was issued to the 1st Respondent/Authority to dispose of W.C. application within four weeks and the time had already elapsed and therefore, no relief could be granted to the Appellant/2nd Respondent. Added further, in the absence of an application to set aside the dismissal of the inter-locutory application, there was no justification for the Appellant/2nd Respondent to file an application to set aside the Ex-parte Order passed on 18.03.1991.

17.On going through the order of the 1st Respondent/Authority in I.A.No.25 of 1991 dated 26.05.1992, we find that the 1st Respondent/Authority had clearly opined that the Appellant/2nd Respondent was an aged and illiterate person and further, if her counsel had participated in the several hearings, then these types of dismissal orders would not have been passed. But in the present case, the Appellant/2nd Respondent had engaged another counsel who had conducted the case and examined the witnesses and accordingly, she had performed her part. In short, the 1st Respondent/Authority had found Appellant's illiteracy and her ignorance, where two factors which went against her. Further, the 1st Respondent/Authority had come to the conclusion that the Appellant/2nd Respondent version that she was afflicted with Jaundice and she took medicine and moreover, she had no adequate facility for medical treatment.

18.It is not out of place for this Court to make a significant mention that Section 23 of the Workmen's Compensation Act, 1923 invests the Commissioner with all the powers of the civil Court under the Code of Civil Procedure for the purpose of taking evidence on oath and enforcing the attendance of witnesses and compelling the production of documents and material objects.

Relevant provisions of the Code of Civil Procedure are

(a)Sections 27 to 32;

(b)Order XI, Rules 12 to 18;

(c)Order XVI;

(d)Order XVIII, Rules 16, 17 and 19

(e)Further, Rule 41 of the Workmen's Compensation Rules enables the following provisions of First Schedule to the Code of Civil Procedure applicable to proceedings before the Commissioners, viz., those specified in Order V, Rules 9 to 13 and 15 to 30;

(f)Order IX and Order XIII, Rules 3 to 10;

(g)Order XVI, Rules 2 to 21;

(h)Order XVII and Order XXIII, Rules 1 and 2.

19.We aptly point out that in Praveen Industries v. Banawal Singh 1990 ACJ 980, the facts were that the Workmen's Compensation Commissioner had allowed the workman's claim to compensation and the employer filed an application under Order 9, Rule 13 of the Civil Procedure Code to get the order of that Authority set aside on the basis that it was passed ex-parte. However, the Authority rejected that application and the employer preferred an appeal before the High Court under Order 43, Rule 1 of the Civil Procedure Code. The issue before the High Court was whether the appeal was maintainable. The contention was raised that since Order 9, Rules 9 to 13 made applicable, the aforesaid application as well as the appeal both were maintainable. But the said contention was partly rejected and it was observed by the High Court as follows:

"As could be seen from Rule 41, only certain specified provisions of the Code of Civil Procedure are made applicable to the proceedings under Workmen's Compensation Act. Order 9 of Civil Procedure Code is one of them. Therefore, certainly an application for setting aside an ex parte order could be filed under Order 9, Civil Procedure Code before the Workmen's Compensation Authority...

An appeal under Order 43, Rule 1, Civil Procedure Code lies against an order made under Rule 13 of Order 9 in view of clause (d) of Order 43, Rule 7, Civil Procedure Code. But the said provision is not made applicable to the proceedings under the Workmen's Compensation Act under Rule 41 of the Workmen's Compensation Rules. Therefore, the appeal under Order 43, Rule 1, Civil Procedure Code is not maintainable."

20.Be that as it may, in fact, no appeal is maintainable under Section 30 the Workmen's Compensation Act, 1923 as against an order rejecting an application for recall of Ex parte Order as per decision Shravan Pal Singh v. Pooran Nath Goswami (1996) 2 LLN 980.

21.Admittedly, the provisions of the Evidence Act are not applicable before the Commissioner under the Workmen's Compensation Act which are summary in nature.

22.We also recall the observations made in Vinlab Export Pvt. Ltd. Nainital v. Karan Bahadur 2006 (110) FLR 416, 417 whereby and whereunder it is observed that 'under Section 5 of the Limitation Act, condonation of delay application, the workmen cannot be deprived of right to file claim petition on account of technicalities and there should be a liberal approach in condoning the delay and that the Tribunal's order in condoning the delay was not an erroneous one.'

23.In fact, Section 5 of the Limitation Act is applicable to the proceedings under Workmen's Compensation Act as per decision Premchand v. Workmen Compensation Commissioner and others (2001) LLR SUM 955 (ALLHC).

24.Though as per the Workmen's Compensation Act, the Commissioner does not possess the inherent powers of a civil Court conferred by a Code of Civil Procedure, but the principles of the said Section applies to quasi-judicial authorities like the Commissioner Workmen Compensation as per decision K.K.Aboo v. The Workmen's Compensation Commissioner 1977 ACJ 446 (Ker).

25.We also point out another decision Koli Mansukh Rana v. Patel Natha Ramji 1992 ACJ 772, 778 wherein at paragraph 17, it is observed thus:

"17.Before parting with this judgment, it is difficult to resist the temptation of mentioning about the approach of the Learned Commissioner. Needless to mention that the proceedings before the Commissioner for Workmen's Compensation are proceedings not like before a civil court and the strict principles of Civil Procedure Code and Evidence Act do not apply as they are applicable in civil proceedings before a civil court. The proceedings under the Act are distinct and stand on a different footing. Higher responsibility is cast on the Commissioner. For example, even under Section 10-A of the Act, the Commissioner is empowered to initiate suo motu inquiry about an employment accident or injury and to collect necessary information on receipt of intimation about such an accident from any source. Rules are also made under the Act. Therefore, the Commissioner is obliged to see that the rightful claim arising out of unfortunate employment injuries is not delayed or defeated on account of any such technicalities or procedures. The Learned Commissioner could have resorted to the provisions of section 12 of he Act. But unfortunately, though the Commissioner found that the applicant was a workman, did not award compensation on hypertechnical ground that it was not proved as to who was the employer. Could a workman who is legally entitled to compensation on account of such calamities arising out of employment injuries be left at the mercy of such technicalities? The Learned Commissioner, unfortunately, failed to address himself to the underlying design and desideratum of the provisions of the Act and the relevant rules. An illiterate and unsophisticated village labourer remains unpaid and was deprived of his rightful compensation for a long spell of nine years on the altar of technicalities. Be as it may."

26.In Management of Venkateswara Industries Chennai v. Deputy Commissioner Labour II, Chennai (2002) LLR 67 (MAD), it is held that 'interference by a High Court in setting aside an Ex-parte Order by the Compensation Commissioner will not be justified.

27.In Thangavel v. Saminathan and others 2004 LLR 126, this Court has held 'refusal of the Commissioner to set aside an Ex-parte Award on the ground that on an earlier occasion also the permission to set aside an Ex-parte Order was allowed and again it could not be allowed will not be tenable.'

28.In M.S.Grewal v. Deep Chand Sood 2001 (8) SCC 151, the Honourable Supreme Court has held hereunder:

"Law Courts will lose their efficacy if they cannot possibly respond to the need of approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

29.In N.Balakrishnan v. M.Krishnamurthy 1998 S.C.F.B. and Rent C 427, it is held that law of limitation is founded in public policy on the 'maxim of interest reipublicae up sit finis litium' i.e. for the general welfare, and observed thus:

"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bade cause would transform into a good cause."

30.In the decision Sakina Bibi v. Shipping Corporation of India 2006 (3) CLR 783 CAL : 2006(3) CHN417, it is held that 'refusal to condone the delay was not proper and in the interests of justice no justification to disbelieve the explanation of delay that on the assurance of employer she could not file a claim petition within limitation.'

31.The concept of 'every day's delay must be explained' does not mean that a pedantic approach should be made. Really speaking, it must be applied in a rational common sense and pragmatic manner. It is now a well accepted principle that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. After all, the end view is that an elastic approach of a Court of Law in a processual system of jurisprudence is to deliver even handed justice on merits in preference to the approach which stifles decision on merits.

32.On a careful consideration of respective parties and bearing in mind of an important fact that the Appellant/2nd Respondent is a illiterate and ignorant person and also considering the facts and circumstances of the case in an integral fashion on the basis of available materials on record, we are of the considered view that rules of procedure and the rules of limitation are not meant to destroy the right of parties and in the present case on hand, the 1st Respondent/Authority while allowing I.A.No.25 of 1991 by his order dated 26.05.1992 had exercised his discretion in proper and sound manner that too with a justice oriented approach and the said order does not suffer from any vice, arbitrariness or capriciousness and in fact, he had applied the design and desideratum of the provisions of the Workmen's Compensation Act, 1923 and the rules in a proper perspective, but these vital aspects were not taken note of by the Learned Single Judge while allowing the W.P.No.19515 of 1992 dated 18.02.2000 and in short, we are not in agreement with the observation made by the Learned Single Judge that the 1st Respondent/Authority had not applied his mind and there was wilful failure on his part to advert to the material circumstances and therefore, we are perforced to interfere with the said order of the Learned Single Judge and accordingly, allow this appeal by setting aside the order in W.P.No.19515 of 1992 dated 18.02.2000 to prevent aberration of justice.

33.In the result, the Writ Appeal is allowed leaving the parties to bear their own costs. Resultantly, the order passed by the Learned Single Judge in W.P.No.19515 of 1992 dated 18.02.2000 is set aside. Having regard to the facts and circumstances of the case, there shall be no order as to costs."[38]

The Hon'ble Court has clearly indicated and given finding that the ex parte awarding authority are having power to decide the matter on merit after recalling the first order which was passed without giving opportunity of hearing passed in violation of natural justice, provide opportunity of hearing, means ex parte awarding court having power to recall its own order, and after recalling the same, may passed the order on merit after hearing the affected parties in the interest of justice.

5.11 Judgement of Hon'ble High Court Madras In Case of A.V. Varghese Vs. N.K. Kumaran Dt of Judgement 10.08.2011 Writ C No. 14248 of 2009 (A)

Kerala High Court giving finding Power of Recall of Ex-Parte Award / order vested in the Commissioner of Employee's Compensation Act, 1923, the Hon'ble Court has further pleased to clear the interpretation that the power of recall is inherent power and power of review is not vested in Commissioner, Employee's Compensation Act, 1923, order of the Hon'ble Court is reproduce here as under,

"Ext.P4 order passed by the Court of the Commissioner for Workmen's Compensation, Kannur in W.C.Case No. 127 of 1991 is under challenge in this writ petition. The brief facts of the case are as follows:

2. The first respondent herein filed an application before the Court of the Commissioner for Workmen's Compensation, Kozhikkode seeking payment of compensation for the injuries sustained by him in the course of employment as a toddy tapper under opposite parties 1 to 11 in the said application. The said application was later transferred to the Court of the Commissioner for Workmen's Compensation, Kannur. By Ext.P1 order passed on 26.4.2008 the Court of the Commissioner for Workmen's Compensation awarded the sum of Rs.47,940 as compensation to the first respondent and directed the petitioner herein, who was joined as opposite party No.4, to pay the said amount of compensation with interest at 12% per annum from the date of the accident together with costs Rs.2,000/-.

3. The case set out by petitioner herein is that he had not WP (C) No. 14248 of 2009 received any notice in W.C.Case No. 127 of 1996 and that he became aware of the proceedings instituted by the first respondent only when a copy of Ext.P1 order was served on him in the address given in the writ petition after it was redirected by the postal authorities. It is stated that after a copy of Ext.P1 order was served on the petitioner on 6.10.2008, he immediately filed Exts.P2 and P3 applications dated 13.10.2008, the former to set aside the exparte order and the latter to condone the delay of five months and seventeen days in filing the former application. By Ext.P4 order which is impugned in this writ petition, the Court of the Commissioner for Workmen's Compensation dismissed the applications on the ground that the Commissioner for Workmen's Compensation

[38] www.madrashighcourt.in

is not empowered to review his own orders and can correct only clerical or arithmetical mistakes arising from any accidental slip or omission. Hence this writ petition, challenging Ext.P4 and seeking a direction to the Court of the Commissioner for Workmen's Compensation to consider Exts.P2 and P3 applications and pass orders thereon on the merits. It is contended that the Commissioner for Workmen's Compensation WP (C) No. 14248 of 2009 is empowered under rule 41 of the Workmen's Compensation Rules, 1924 to exercise the powers of the civil court under Order IX and therefore, the statement in Ext.P4 order that the Commissioner for Workmen's Compensation does not have the power to set aside an exparte order for the reason that he has no power of review, cannot be sustained. The petitioner also relies on the decision of a learned single Judge of this Court in O.P. No14159 of 1996 in support of his contention that under rule 41 an application to set aside an order passed exparte is maintainable.

4. The first respondent, who is the principal contesting respondent has been served. He has also sworn to a counter affidavit wherein it is contended that the Commissioner for Workmen's Compensation did not commit any mistake, that the address given by the petitioner to the Welfare Fund Inspector, Kozhikkode was the address given in Ext.P1 order, that the petitioner purposefully gave a false address to avoid being proceeded against for realization of compensation by his employees, that steps were taken on a number of occasions to serve notice on the petitioner by post, but such attempts were WP (C) No. 14248 of 2009 unsuccessful, that thereupon the notice was published in the `Pradeepam' daily dated 16.11.2005 and 6.3.2008, that even thereafter the petitioner did not enter appearance and therefore the Commissioner for Workmen's Compensation set him exparte. The first respondent has also raised various other contentions including the contention that the remedy of the petitioner if he is aggrieved by Ext.P1 is to challenge the same in appeal and therefore, as the petitioner has an alternate remedy, the writ petition is liable to be dismissed.

5. When this writ petition came up for hearing on 25.7.2011, after hearing the learned counsel on both sides it was felt that the records leading to Ext.P4 should be called for. I accordingly directed the Court of the Commissioner for Workmen's Compensation, Kannur to make available the files leading to Ext.P4 order through the learned Government Pleader. The files were accordingly produced by him today. The learned Government Pleader after going through the files submitted that the files do not contain an application for review and that it contains the originals of Exts.P2 and P3 applications filed by the petitioner to set aside Ext.P1 order passed exparte WP (C) No. 14248 of 2009 after condoning the delay in filing the said application. I have also perused the files. The original of Ext.P3 application is at pages 311 to 315. The prayer therein is to condone the delay of 517 days in filing the application to set aside the exparte order passed on 26.4.2008. The original of Ext.P2 is at pages 351 to 355 thereof. The prayer therein is to set aside the exparte order passed on 26.4.2008. Apart from the said applications, no application seeking a review of Ext.P1 order is available in the files. The Court of the Commissioner for Workmen's Compensation however rejected the applications on the

ground that under rule 32(2) of the Workmen's Compensation Rules, 1924 he is not empowered to review his own orders and can correct only clerical errors.

6. In O.P.No. 14159 of 1996, after analyzing rules 32 and 40 (1) of the Workmen's Compensation Rules 1924, Justice J.B.Koshy (as his lordship then was) held as follows:

"1..... In this case, Ext.P1 judgment was passed exparte and petition under rule 41 read with connected provisions under the Code of Civil Procedure was filed before the Commissioner. This was rejected because of the provisions in rule 32.

WP (C) No. 14248 of 2009

2. It is argued by the learned counsel for the respondent that after passing the judgment if the petitioner is aggrieved his remedy was to file an appeal under *Section 30* of the Workmen's *Compensation Act*. To avoid deposits, he chosen this method and in view of rule 32 Commissioner was right in not interfering with the matter.

3. It is true that under rule 32 Commissioner cannot review the order already passed. In view of rule 41, I am of opinion that if the judgment is passed as exparte, Commissioner has got power to set aside the above if he is satisfied that there are reasons for setting aside the exparte order. Learned counsel for the respondent also emphasized the effect of the proviso to rule 41 and also submitted that even if there are no grounds for setting aside the exparte order in this case, under rule 41, Commissioner has got power to set aside exparte order. In paragraph 5 of counter affidavit, he details the delay and latches on the part of the petitioner in not prosecuting the case and delaying the matter. Whether the petitioner has got sufficient grounds for setting aside the exparte order is a matter for the Commissioner to look into. But, the Commissioner has got power to set aside an exparte order if he is satisfied that the reasons stated by the party are correct. Therefore, Ext.P2 application for setting aside the exparte order has to be considered by the Commissioner on merit. Therefore, I set aside Ext.P3 order and direct the Commissioner to consider Ext.P2 WP (C) No. 14248 of 2009 application on merit".

7. I am in respectful agreement with the opinion of the learned single Judge in O.P.No.14159 of 1996. It is evident from a reading of Ext.P4 order that the Commissioner for Workmen's Compensation treated the applications filed by the petitioner as applications to review his own order. The Commissioner for Workmen's Compensation thereby misdirected himself when he passed the impugned order. As held by this Court in O.P.No.14159 of 1996, rule 41 of the Workmen's Compensation Rules, 1924 empowers the Commissioner for Workmen's Compensation to set aside the order passed exparte if the person against whom the exparte order has been passed makes out sufficient grounds for setting aside the exparte order. It is evident from the materials on record and the files leading to Ext.P4 that the Commissioner for Workmen's Compensation has not considered the application submitted by the petitioner to set aside the exparte order by treating it as an

application filed under rule 41 of the Workmen's Compensation Rules, 1924. Necessarily therefore, it has to be held that Ext.P4 order cannot be sustained.

WP (C) No. 14248 of 2009 In the result I allow the writ petition, set aside Ext.P4 and direct the Court of the Commissioner for Workmen's Compensation, Kannur to pass orders on Exts.P2 and P3 applications, expeditiously and in any event within two months from the date on which either the petitioner or the first respondent produces a certified copy of this judgment before him. Till such time as orders are passed on Exts.P2 and P3 applications, recovery proceedings pursuant to Ext.P1 order shall be kept in abeyance. I make it clear that I have not expressed any opinion on the merits of the rival contentions and that it is for the Commissioner for Workmen's Compensation to decide whether having regard to the pleadings and the materials on record, Ext.P1 order is liable to be set aside as prayed for by the petitioner."[39]

5.12 Judgement of Hon'ble High of Allahabad in Case of Writ – C NO. 33855 of 2006 (Marshal Securities Vs. State of UP date of order 13.09.2006

That the Allahabad High Court has framed two question with regard to the power of Employee's Compensation Commissioner under the Employee's Compensation Act, 1923, the question is quoted below as under

(1) Whether the law laid down in paragraph 16 of the judgment in the case of United India Insurance Co. Ltd. v. Workmen's Compensation Commissioner 1996(73) F.L.R, 1541 lays down the correct law ?

(2) Whether the Workmen's Compensation Commissioner has the power to review his own award under the Workmen's Compensation Act, 1923 ?

That the Hon'ble Court has framed the aforesaid two questions and till date no proper answer has been given in the context of the question as framed and finally aforesaid writ petition has been decided in terms of compromise and till date no answer has been given and writ petition is disposed of vide order dt. 13.10.2022 is reproduce herewith, " 1. Vide order dated July 6, 2022, noticing the fact stated in the affidavit filed by learned counsel for parties, we had pleaded settlement of dispute amongst them, the matter was referred to the Civil Judge (Senior Division), Ghaziabad for verification of the settlement. In the report received from the Civil Judge (Senior Division), Ghaziabad it has been mentioned that the settlement between the appellant and respondent no. 3 was found to be genuine and they prayed before the Court for endorsing the same. 2. Keeping in view the aforesaid fact, the present petition is disposed of, as the dispute has been compromised between

[39] https://indiankanoon.org/doc/63278747/

parties." The question has been framed and is still required for an answer but the matter aforesaid has already been adjudicated without any answer, judgement is quoted below,

" Hon'ble Justice Vineet Saran, J.

1. The moot question for determination of this Court in this writ petition is as to whether the Workmen's Compensation Commissioner (for short 'the Commissioner') has power to review his own Award passed under the Workmen's Compensation Act, 1923 (for short 'the Act').

2. The brief facts of this case are that the petitioner-firm is engaged in the business of supply of security guards. On request of Respondent No. 4 Vinod Agarwal of M/s Agarwal Iron and Steel Company Ltd., the petitioner firm supplied some security guards, including two gun-men, out of whom Raj Kumar Singh, husband of Respondent No. 3 was one, who was shot dead while on duty. The case of the petitioner, however, is that at the time of the incident the services of the deceased gun-man were being utilized by the Respondent No. 4 for personal use and as such he could not be treated to be on duty. The respondent No. 3 Kamlesh, wife of late Raj Kumar Singh, then filed a claim under the Act for compensation of Rs. 4,15,960/- along with 12% interest and also 50% penalty. Such claim was made against the petitioners and the Respondent No. 4. After considering the case of the respective parties, the Commissioner passed an Award on 31.3.2005, granting compensation of Rs. 3,79,563/- against the Respondent No. 4. Then after a gap of nearly two months, on 25/30.5.2005 the Respondent No. 4 filed an application under Section 23 of the Act; Rule 41 of the Workmen's Compensation Rules, 1924 (for short 'the Rules') and Section 151 of the Code of Civil Procedure (C.P.C.), with the following prayer:

It is, therefore, prayed that the Judgment dated 31.3.2005 be set aside as against the applicant

3. The main ground for reviewing or setting aside the judgment (Award) dated 31.3.2005 was that the mandatory provision of framing issues as provided under Rule 28 of the Rules had not been complied with, which is an error apparent on the face of the record, resulting in miscarriage of justice. The petitioners herein filed their objections to the review application stating that the Commissioner does not have the power to review his judgment, and that even if such an application was filed on the ground of the Award being erroneous in law, then too the same would not be maintainable. It was also stated in the objection that the copy of the said application dated 25/30.5.2005 had not been supplied to the petitioners and that they would give a detailed reply on receipt of such application.

4. However, by order dated 7.12.2005, the Commissioner allowed the application of the Respondent No. 4 and set aside the Award dated 31.3.2005 on the condition that the Respondent No. 4 deposits a sum of Rs. 80,000/- within one week and pays a sum of Rs. 10,000/- as cost to the claimant-Respondent No. 3. The Commissioner thereafter proceeded to decide the matter on merits and passed a fresh Award dated 20.4.2006, whereby the entire claim of Respondent No. 3, amounting to Rs. 4,15,960/- along with 12% interest, was awarded in favour of Respondent No. 3 and against the petitioners. This writ petition has, thus, been filed by the petitioners

challenging the order dated 7.12.2005 and the subsequent Award dated 20.4.2006 passed after allowing the review application.

5. I have heard Sri V.R. Agarwal, learned Senior counsel along with Sri C.B. Gupta, learned Counsel appearing for the petitioners; Sri Anoop Trivedi for claimant-Respondent No. 3 and Sri R.K. Awasthi for Respondent No. 4. Learned Standing counsel appeared for Respondents No. 1 and 2. Learned Counsel for the respondents had made a statement that they do not wish to file counter affidavit and thus, with the consent of the learned Counsel for the parties, this writ petition is being decided at the admission stage itself.

6. Learned Counsel for the respondents raised a preliminary objection regarding the maintainability of this writ petition. It has been stated that once the Award dated 20.4.2006 had been passed, the same could not be challenged in writ jurisdiction as the petitioners have an alternative remedy of filing an appeal under Section 30 of the Act. Such objection of the respondents is not tenable as, besides the Award, the petitioners have also challenged the order dated 7.12.2005 whereby the application for reviewing the earlier Award dated 31.3.2005 had been allowed and the aforesaid Award had been set aside.

7. The decision of the Apex Court in the case of Sadhana Lodh v. National Insurance Co. Ltd. , as has been relied upon by the learned Counsel for the respondents, would not apply to the facts of the present case. In the said case the writ petition challenging the Award of the Motor Accident Claims Tribunal passed under the Motor Vehicles Act, was held to be not maintainable on the ground that mere wrong decision, without anything more, would not be enough to attract the jurisdiction of the High Court under Article 226 of the Constitution of India. In the present case, besides the Award, the order dated 7.12.2005 setting aside the award, is also under challenge.

8. The Apex Court in the case of Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidvalava, Sitapur , while dealing with a case where the Vice Chancellor disapproved the dismissal of the Principal of the College and ordered for his reinstatement, had reviewed his own order of dismissal and such order passed in review was thereafter challenged in writ jurisdiction, which was held to be maintainable on the ground that the Vice Chancellor had no power of review, and exercise of such power by the Vice Chancellor was absolutely without jurisdiction and on such facts, it was held that the same could surely be challenged before the High Court by petition under Article 226 of the Constitution of India and alternative remedy of appeal would not be a bar in such a case.

9. Since the present case is not a simple case of challenging the Award but also the order allowing the review application of the Respondent No. 4 by which the earlier Award had been set aside, in my view, the question regarding the power of the Commissioner to review his order would require to be first determined by this Court and the preliminary objection regarding the maintainability of this writ petition on account of alternative remedy of appeal under Section 30 of the Act, would thus not be tenable and is liable to be rejected.

10. Now before coming to the main question as to whether the Commissioner has the power to review his own decision, certain provisions of the Act have to be first noticed.

11. Section 6 of the Act provides for review in certain cases which would be only limited to half monthly payments payable under the Act. Section 6 of the Act is quoted below:

6. Review.- (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate, (emphasis supplied) (2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

12. Section 23 of the Act, relating to the powers and procedure of the Commissioner, as well as Rule 41 of the Rules, relating to applicability of certain provisions of C.P.C. 1908, under which the application for review had been filed by the Respondent No. 4, are also quoted below:

23. Powers and procedure of Commissioners.- The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the Commissioner shall be deemed to be a Civil Court for all the purposes of Section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

X X X X Rule 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, insofar 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.

13. Rule 32 of the Rules, which relates to judgment to be passed by the Commissioner, is being quoted below:

32. Judgment.- (1) The Commissioner, in passing order, 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.

(emphasis supplied)

14. Rule 28 of the Rules relates to the framing of issues and since the application for setting aside the Award dated 31.3.2005 had been filed mainly on such ground, the said Rule is also required to be noticed and is quoted below:

28. Framing of issues. -(1) After considering any written statement and the result of any examination of the parties, the Commissioner shall ascertain upon what material propositions of fact, or of law the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend.

(2) In recording the issues, the Commissioner shall distinguish between those issues which in his opinion concern points of facts and those which concern points of law.

15. Having noticed the aforesaid provisions let me briefly note the submissions of the learned Counsel for the parties.

16. Sri V.R. Agarwal, learned Senior counsel for the petitioners, has submitted that the power of review has to be specifically conferred by the Statute and in the absence of there being any such power, the judgment (Award) passed by the Commissioner cannot be reviewed. In support of such contention he has relied on certain decisions, which shall be referred to later. He further contended that except for Section 6 of the Act providing for review (which is only for orders relating to half monthly payments payable under the Act), there is no other provision of review under the Act. Rule 32 relates to correction of clerical or arithmetical mistakes arising from any accidental slip or omission. It has been urged that the Commissioner becomes functus officio after the passing the Award and has no power under the Act or the Rules to review or recall the same. It has further been submitted that by the impugned order dated 7.12.2005 the Commissioner has set aside the earlier Award dated 31.3.2005, as if sitting in appeal against the said Award, which is not permissible in law. Lastly, it was contended that the ground on which review was sought was also not tenable in law as the framing of issues was not mandatory and an Award passed without the issues being framed, could not be held to be illegal merely on such ground.

17. Sri Anoop Trivedi, learned Counsel for the claimant-Respondent No. 3, contended that in the dispute between the petitioners and the Respondent No. 4 as to who would be liable to pay the compensation, the claimant is suffering irreparably and he thus urged that either of the two parties may be directed to make the payment, pending dispute as to who would be liable to pay. He has further contended that review can be placed in two categories, namely, (i) review on merits and (ii) procedural review; and as has been held by the Apex Court in the case of Grindlays Bank v. Central Government Industrial Tribunal , 'review on merits' would be permissible only if the Statute provides for the same, whereas the 'procedural review' would be permissible under the inherent powers of all quasi judicial authority. He has also relied on several decisions, which shall be dealt with at the stage of discussion regarding this issue.

18. Sri Awasthi, learned Counsel for the Respondent No. 4, supported the submissions of Sri Trivedi and contended that in the facts of this case, the Commissioner had the power to review its Award.

19. A full Bench of this Court in the case of Shivraji v. Deputy Director of Consolidation1997 A.W.C. (Suppl.) 454 has, while dealing with a case under the U.P. Consolidation of Holdings Act, held that it would not be open for the authorities to review/recall their final orders in exercise of inherent powers, unless the Act confers such power on them.

20. A Division Bench of this Court in the case of Suresh Chandra Sharma v. Presiding Officer, Labour Court-IV, Kanpur 2003 L.L.R. 723 has, while summarizing the law relating to review, held that "in absence of any statute providing for review, entertaining an application for review or under the garb of clarification/'modification/ correction is not permissible."

21. A Division Bench of Gauhati High Court in the case of Mosstt. Goljan Nesha v. M/s Gammon India Ltd. 2006 Lab.I.C. 2135, while considering the question as to whether the Commissioner under the Workmen's Compensation Act had the jurisdiction either to revise or review its own order, held that since the power of review was not expressly conferred by the Statute, the said power would not be available to the Commissioner and that the only power provided under the Statute was for correction of clerical or arithmetical mistakes, which could be done under Rule 32 (2) of the Rules.

22. The Rajasthan High Court in the case of Smt. Bimla v. Union of India 1980 (41) FLR 297, also while dealing with a case under the Workmen's Compensation Act, has held that the decision on a question of law does not constitute a clerical or arithmetical mistake, and thus cannot be corrected after the passing of the judgment.

23. Patna High Court in the case of Basudeo Rai v. Jagarnath Singh 1987 Lab. I.C. 565, also while dealing with a case under the Workmen's Compensation Act, has held that the Commissioner cannot review his order even on the ground that it was erroneous in law.

24. While carving out a distinction regarding review on merits and procedural review, Sri Trivedi has urged that the case in hand falls under category of procedural review, as the Award dated 31.3.2005 had been passed without following the procedure laid down under Rule 28 providing for framing of issues, and as such even though there may be no specific provision for review, it would be permissible for the Commissioner to recall or set aside his order under inherent powers, as there was procedural irregularity. In support of his submission he has relied on the decision of the Apex Court in the case of Grindlays Bank Ltd. (supra). The said case before the Supreme Court was under the Industrial Disputes Act. It was held therein that it is true that there is no express provision under the Industrial Disputes Act or the Rules framed thereunder, giving the Tribunal power of review but it was a well settled known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as would be necessary to discharge its functions effectively for the purposes of doing justice between the parties. The Supreme Court was of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is indication in the Statute to the contrary. The Apex Court classified the expression 'review' in two distinct senses, namely, "(1) a procedural review which is either inherent or implied in a court or Tribunal to set aside

a palpably erroneous order passed under a misapprehension by it; and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record". It was held by the Supreme Court that "when a review is sought due to procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal". However, the review on merits would lie only when the Statute specifically provides for the same.

25. In the said case of Grindlays Bank (supra) the Supreme Court was considering a case where the party seeking review or setting aside of the award of the Industrial Tribunal was prevented from appearing at the hearing due to sufficient cause and was thus faced with an ex parte award. As such, after holding that the award was without notice to the party, the same was found to be nothing but a nullity and it was in such circumstances that the Supreme Court held that the Tribunal has not only the power, but also the duty to set aside the ex parte award and to direct the matter to be heard afresh.

26. Grindlays Bank's case was considered by the Apex Court in the case of Kapra Mazdoor Ekta Union v. Management of Birla Cotton Spinning and Weaving Mills Ltd. 2005(2) A.W.C. 1075. In paragraphs No. 19 and 20 of the said judgment, the Supreme Court held as follows:

19. Applying these principles, it is apparent that where a Court or quasi-judicial authority, having jurisdiction to adjudicate on merit, proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so, commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently, the order passed therein. Cases where a decision is rendered by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite parties, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case, the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi-judicial authority suffered from such illegality that it vitiates the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceedings. In Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Ors. (supra), it was

held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again.

20. The facts of the instant case are quite different. The recall of the award of the Tribunal was sought not on the ground that in passing the award, the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. Apparently, the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication.

27. Sri Trivedi, learned Counsel for the claimant-respondent No. 3 has, however, stated the error committed by the Tribunal was of passing the award without framing of issues which were mandatorily required to be done under Rule 28 of the Rules. In support thereof he has relied on the decision of Himachal Pradesh High Court in the case of Leela Devi v. Sh. Ram Lal Rahu 1989 Lab.I.C. 758 and that of the Patna High Court in the case of Ramautar Chowdhary v. Sone Valley Portland Cement Co. Ltd. A.I.R. 1958 Patna 540.

28. On the other hand the Orissa High Court in the case of The New India Assurance Company Ltd., v. Braja Kishore Sutar 1992 Lab, I.C.36, also while dealing with a case under the Workmen's Compensation Act, has held that the requirement of framing issues mentioned in Rule 28 of the Rules is not mandatory and an order of Commissioner would not be rendered vitiated because of non-framing of issues, unless the same has caused prejudice to the affected party.

29. What is noteworthy is that in the aforesaid cases of Leela Devi and Ramautar (supra) the matters before the High Courts were in appellate jurisdiction meaning thereby that regular appeals under Section 30 of the Workman's Compensation Act had been filed and after it was found that since the said cases were contested cases and were decided without framing the issues, after setting aside the Award, the matters were remanded back to the respective Workman's Compensation Commissioner for fresh decision. Even if we ignore the opinion of the Orissa High Court rendered in the ease of The New India Assurance Company Ltd.supra) that the requirement of framing of issues is not mandatory and that an order of the Commissioner would not be rendered vitiated because of non framing of issues, then too the outcome of the said decision would not in any way mean that in case if the issues were not framed before passing of the award, the award could be reviewed.

30. Reviewing the award on such ground of non framing of issues would, in my view, amount to deciding the case afresh on merits and could not be classified as a procedural review (which is either inherent or implied in a court of Tribunal) to set aside a palpably erroneous order passed under a misapprehension. The same would only be a review on merits, which would be permissible only if Statute so provides. Review, in such cases, cannot be made an alternative to statutory appeal. In the present case, the order dated 7.12.2005 (on the review application) has been passed as if sitting in appeal against the award dated 31.3.2005, which is not permissible in law.

31. In my considered view, in the facts of the present case, the award of the Tribunal in question was thus not void or nullity, in the sense of the same having been passed ex parte or without notice to a party, and accordingly the same could not have been revised, reviewed or recalled on an application filed by Respondent No. 4. The Act, under section 6, only permits limited review of any order relating to half-monthly payments and the present case does not fall in that category. The present case would also not be covered under Rule 32(2) of the Rules. Rule 32 of the Rules clearly provides that after the pronouncement of the judgment, no addition or alteration shall be made to the judgment except in the case where "correction of a clerical or arithmetical mistake arises from any accidental slip or omission". This case would also not fall under the said rule, as there was no such correction required to be made. If the award has not been passed in accordance with any procedure, then the same can be challenged on merits only in accordance with law, which is by filing appeal under Section 30 of the Art. In case if such a procedure of filing a review application on merits is permitted, without there being any specific provision under the Statute, there would be no finality attached to the award even after the proceedings before the Commissioner have become final. Thus, in my opinion, in the present case the only alternative for the aggrieved party was to file an appeal against the Award initially passed, and not by way of filing an application before the Commissioner for reviewing or setting aside the said award dated 31.3.2005.

32. A single Judge of this Court in the case of United India Insurance Co. Ltd. v. Workmen's Compensation Commissioner/Regional Assistant Labour Commissioner 1996 (73) F.L.R. 1541 has held as follows:

16. Now on the question whether the Workmen's Compensation authority had jurisdiction to review, it appears that the Workman's Compensation Commissioner exercises quasi-judicial jurisdiction having all the trapping of the court procedure whereof has not been elaborately laid down either under the Act or under the rules. The absence of specific provision does not debar such authority from dispensation of justice. The authority who is passing the order which is enforceable otherwise can not be said to lack jurisdiction to recall or review its order if occasion so demand in order to do justice. While dispensing justice or exercising quasi-judicial jurisdiction unless it has specifically prohibited or barred the power to review its own order inheres in the Tribunal or the authority concerned.

33. The said case was decided after relying on a judgment of this Court rendered in the case of Oriental Insurance Company v. Fida Ali 1995 (25) A.L.R. 532 which was a case under the Motor Vehicles Act and not under the Workman's Compensation Act.

34. For the reasons given here-in-above, in my view, the law laid down in paragraph 16 of the judgment in the case of United India Insurance Co. Ltd. {supra) that the Workmen's Compensation Commissioner would have the power to review its own order even though the same may not be provided under the Act does not lay down the correct law. As such, the following questions need to be referred to a larger Bench for its opinion:

(1) Whether the law laid down in paragraph 16 of the judgment in the case of United India Insurance Co. Ltd. v. Workmen's Compensation Commissioner 1996(73) F.L.R, 1541 lays down the correct law ?

(2) Whether the Workmen's Compensation Commissioner has power to review his own award under the Workmen's Compensation Act, 1923 ?

35. Let the papers of this case be placed before Hon'ble The Chief Justice for appropriate orders.

36. Before parting with this case, since the claimant is suffering because of the dispute as to which of the parties (i.e. the petitioner or the respondent No. 4) is to pay the compensation, in the interest of justice it would be necessary to meanwhile protect her interest, even though it may be to a limited extent. While setting aside the Award dated 31.3.2005, the Workmen's Compensation Commissioner had, vide his order dated 7.12.2005, imposed a condition that the Award be set aside only on the condition of the respondent No. 4 depositing a sum of Rs. 80,000/- and paying costs of Rs. 10,000/- to the claimant. Cost must have been paid, and if not then the same should be paid to the claimant immediately. However, the amount of Rs. 80,000/- deposited by the respondent No. 4 in terms of the order dated 7.12.2005, and remaining with the Workmen's Compensation Commissioner, shall be paid to the claimant-respondent No. 3, without requiring her to furnish any security, within two weeks of her making an application for withdrawal before the Commissioner. The said amount shall be adjusted in the final award. In case if it is ultimately determined that the respondent No. 4 is liable to pay the compensation, he shall then be required to pay only the balance amount of the award to the claimant. However if the liability is ultimately fastened on the petitioners, they shall then be, required to pay/refund the sum of Rs. 80,000/- to the respondent No. 4 and pay the balance of the amount awarded to the claimant. This order is being passed in order to balance the equities between the parties and in the interest of claimant, who is in any case entitled to payment of compensation, but is not being paid the same for no fault of hers.[40]"

That it is important to mention here that the Hon'ble Justice Vineet Saran, J. has given finding that the Court of learned Commissioner of Employee's Compensation Act, 1923 has no power to recall his order passed in ex parte manner, and also framed two question and matter refer to the larger bench, for answer whether the Commissioner of Employee's Compensation Act, 1923 has power to review his own order and also farmed the question tha the judgment of United India Insurance Co. Vs. Workmen's Compensation Commissioner is the correct law, the aforesaid answer is still undecided and petition disposed of in terms of settlement between the parties vide order dt. 13.10.2022 order is reproduced herewith,

" Vide order dated July 6, 2022, noticing the fact stated in the affidavit filed by learned counsel for parties, we had pleaded settlement of dispute amongst them, the matter was referred to the Civil Judge (Senior Division), Ghaziabad for verification of the settlement. In the report received from the Civil Judge (Senior Division), Ghaziabad it has been mentioned that the settlement between the appellant and respondent no. 3 was found to be genuine and they prayed before the Court for endorsing the same. 2. Keeping in view the aforesaid fact, the present petition is disposed of, as the dispute has been compromised between parties.[41]"

[40] https://indiankanoon.org/doc/842957/
[41] www.allahabadhighcourt.in

5.13 Judgement of Hon'ble High of Allahabad in Case of Mohd. Ikram & Another vs Dy. Labour Commissioner U.P. Civil Misc Writ Petition No. 15505 of 2011 decided on 7 May, 2013

The Allahabad High Court is the opinion that the Tribunal has no jurisdiction to recall its own order that the judgement is required consideration of the earlier judgement and without observing and taking into consideration of judgement learned judge has passed the order holding that the Employee's Compensation Commissioner under the Employee's Compensation Act has no power to recall his own order, the order of the Hon'ble Court is reproduces here as under,

"Hon'ble Justice Tarun Agarwala, J. Two sons of the petitioner died during the course of employment on 20th October, 2008. It is alleged that the death occurred on account of leakage of a gas in the factory. A first information report was also lodged and the incident was also reported in the newspapers. The petitioner filed a claim application before the Commissioner Workmen's Compensation for a sum of Rs.8,85,360/-. The Commissioner after considering the matter gave an award dated 7th December, 2010 allowing the claim and awarding a sum of Rs.4,42,740/-. The employer, being aggrieved, by the said award filed a recall application, which was allowed by an order dated 14th February, 2011 and, by the same order, the claim of the petitioner was also rejected. The claimants, being aggrieved, by the said order has filed the present writ petition.

Heard Sri A.K.S. Bais, the learned counsel for the petitioners and Sri Vivek Singh, the learned counsel for the respondent.

The learned counsel for the petitioner submitted that there is no provision under the Workmen's Compensation Act for review of an order passed by the Commissioner Workmen's Compensation and, consequently, the impugned order is patently without jurisdiction and is liable to be quashed.

On the other hand, it was contended that the authority has the inherent power to recall its order and in any case, where fraud is played, the authority can always review its order.

In order to appreciate the rival contention of the parties, it is necessary to have a look into certain provisions of the Workmen's Compensation Act. Section 23 of the Act read with Rule 41 of the Workmen's Compensation Rules makes certain provisions of Code of Civil Procedure applicable to proceedings before the Commissioner. For facility, Section 23 of the Act and Rule 41 of the Rules are extracted hereunder:-

"23. Powers and procedure of Commissioners.- The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, [and the Commissioner shall be deemed to be a Civil Court for all the purposes of [section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)]].

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.

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."

A perusal of the aforesaid provision indicates that only certain provisions of the Code of Civil Procedure are applicable to proceedings before the Commissioner Workmen's Compensation. Section 114 or Order XLVII of the Code of Civil Procedure are not applicable, which relates to review. These provisions have not been included and, consequently, the Court is of the opinion that the power of review has been specifically excluded under Section 23 of the Act read with Rule 41 of the Rules.

Rule 32(2) of the Rules provides that the Commissioner after pronouncing the decision has no power to make any addition or alteration in the judgment other than correction of a clerical or arithmetical mistake arising from any accidental slip or omission. For facility, the said provisions is extracted hereunder:-

"32(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."

From the aforesaid provisions, the Court is of the opinion that the Commissioner has the power to correct clerical or arithmetical mistake arising from accidental slip or omission in his judgment but has no power to review his judgment. Since there is no statutory provision conferring any power of review on the Commissioner under the Workmen's Compensation Act either specifically or by necessary implication, the Commissioner has no power to review his own decision.

In Raman Agnihotri Vs. Commissioner Workmen's Compensation, Kanpur and others, 2009 (120) FLR 967 the Court held that the Commissioner Workmen's Compensation has no power to review his judgment.

The learned counsel for the respondent has relied upon a decision in United India Insurance Com. Ltd. Vs. Rajendra Singh, AIR 2000 SC 1165 wherein the Supreme Court held that the Motor Accident Claims Tribunal had the power to review its own order where fraud was played upon it.

There is no quarrel with the aforesaid proposition. No Court or Tribunal can be regarded as powerless to recall its own order, if it is convinced that the order was obtained by fraud or misrepresentation. In the instant case, there is no plea of fraud being played. The Court finds that the Commissioner while passing the first order allowing the claim had considered all the evidence and the submission of the claimants as well as the owner and thereafter gave an award. The recall application was filed by the owners on the ground that certain facts and evidence had not been considered. A plea of misappreciation of evidence was raised. No plea of fraud was alleged by the owners. The Court is consequently, of the view that in the absence of a plea of fraud being raised, it was not possible for the Commissioner to reappreciate the entire arguments or reconsider the matter de novo or review its own judgment.

In the light of the aforesaid, the order of the Commissioner dated 14th November, 2011 allowing the recall application and rejecting the claim of the petitioner is patently illegal and without jurisdiction, which cannot be sustained and is quashed. The writ petition is allowed.[42]"

5.14 Judgement of Allahabad High Court Lucknow Bench Writ – C No. 7606 (Balaji Stone Crusher thru Partner Smt. Kiran Saini Vs State of UP & Others judgement and order dt. 02.08.2022

The Hon'ble Allahabad High Court Lucknow Bench has given finding that the in paragraph 11 that the passing authority has no right to review his own order whether passed in ex parte and passed in ex parte on merit, is

[42] https://indiankanoon.org/doc/177925132/

only appealable to the higher court not in the same court, because the labour court and employee's compensation court is non judicial court and power of review and recall is only vested in the court of judicial court, the order passed by the Hon'ble Court is reproduce here as under,

" Hon'ble Justice Manish Kumar,J.

1. Heard Ms. Pushpila Bisht, Sri Dilip Pandey, Sri Akhilesh Kumar, Sri Anand Mani Tripathi, Sri Gagan Katyaayan, Ms. Garima Dixit, Sri Himanshu, learned counsel for the petitioners and learned Standing counsel for the State.

2. In all the above-noted writ petitions common questions of law are involved, thus, they have been heard in a bunch and are being disposed of by means of this common judgment to be applicable to all the writ petitions.

3. Issues involved in the aforesaid petitions are same except in Writ Petitions bearing Nos. Writ C Nos. 10236 of 2019 and 14989 of 2019 wherein the petitioners are lessee whereas in the rest of the petitions, petitioners are stone crushers.

4. The present writ petitions have been preferred for quashing of the orders passed by the respondent no. 1 whereby the orders allowing the revision on different dates had been recalled fixing the date for hearing and thereafter the order passed on different dates whereby the revisions have been dismissed by reviewing its earlier orders of allowing the revisions.

5. Learned counsel for the petitioners have submitted that the show cause notices were issued against the petitioners by the District Magistrate, Saharanpur on different dates with charge of illegal mining carried out during the period of 2011-7. The petitioners had duly replied to the show cause notices and thereafter, the orders were passed by the District Magistrate, Saharanpur on different dates against all the petitioners levying charges for illegal mining upon the petitioners.

6. Feeling aggrieved by the order of the District Magistrate, Saharanpur, petitioners had preferred appeals under Section 77 of the Rules, 1963 before the Commissioner, Saharanpur Division, Saharanpur i.e. respondent no. 2.

7. The appeals preferred by the petitioners were also dismissed by orders passed on different dates and feeling aggrieved by the same, the revisions were filed before the State Government/ Revisional Authority-respondent no. 1.

8. The Revisions preferred by the petitioners were allowed by the revisional authority by detailed orders on different dates after calling the objections from the District Magistrate, Saharanpur and the Mining Officer.

9. It is further submitted that the revisional authority in revision of Pradhan Stone Crushers, which is not the petitioner in this bunch of petitions, had sought some information from the District Magistrate, Saharanpur vide its order dated 05.03.2019 and in reply thereto, District Magistrate, Saharanpur had submitted its report stating therein that the persons who had preferred the revisions indulged in the illegal mining and the orders passed in Revision in their favour are liable to be recalled.

10. Thereafter, the revisional authority without issuing any notice or providing any opportunity of hearing to the petitioners had recalled its orders vide order dated 07.03.2019 passed in revision later on after notice and hearing the parties, dismissed the revisions by passing the orders on different dates.

11. The order of recall passed by the revisional authority i.e. respondent no. 1 is without jurisdiction as there is no power vested with the respondent no. 1 to recall its earlier order under the Rules, 1963. The only exception to recall the order in absence of any provision empowering the authority is if the order has been passed ex-parte. In support of their submissions, they placed reliance on the judgment passed in the case of Suresh Chandra Sharma Vs. Presiding Officer, Labour Court, IV Kanpur and others reported in 2003 SCC Online All 399. The relevant para i.e. para no. 14 is quoted hereunder for convenience:-

14. However, the issue involved in this case has been dealt with by the Hon'ble Supreme Court in Grindlay's Bank case, 1980 Supp SCC 420 : AIR 1981 SC 606, wherein the distinction between a review and recalling an ex parte order has been explained and that was a case wherein the Hon'ble Supreme Court was dealing with a matter of recalling the ex parte Award by the labour court itself. The Hon'ble Apex Court held that even in absence of any statutory provision if the labour court is satisfied that ex parte order has to be recalled, there is no bar in law for recalling the ex parte. Similar view has been reiterated in Satnam Singh Verma v. Union of India, 1984 Supp SCC 712 : AIR 1985 SC 294.

12. It is further submitted that there is no power vested with the respondent no. 1 to review its earlier order under the Rules, 1963 and hence the order has been passed without jurisdiction. In support of their submissions, they placed reliance on the following judgments of Hon'ble Supreme Court.

1. Naresh Kumar and others Vs. Government (NCT of Delhi) reported in (2019) 9 SCC 416. The relevant paras on which reliance has been placed are 13 and 14, which are quoted hereunder:-

"13. It is settled law that the power of review can be exercised only when the statute provides for the same. In the absence of any such provision in the statute concerned, such power of review cannot be exercised by the authority concerned. This Court in Kalabharati Advertising v. Hemant Vimalnath Narichania [Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808] , has held as under: (SCC pp. 445-46, paras 12-14) "... 12. It is settled legal proposition that unless the statute/rules so

permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar [Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar, AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh [Harbhajan Singh v. Karam Singh, AIR 1966 SC 641] .)

13. In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji, (1971) 3 SCC 844] , Chandra Bhan Singh v. Latafat Ullah Khan [Chandra Bhan Singh v. Latafat Ullah Khan, (1979) 1 SCC 321] , Kuntesh Gupta v. Hindu Kanya Mahavidyalaya [Kuntesh Gupta v. Hindu Kanya Mahavidyalaya, (1987) 4 SCC 525 : 1987 SCC (L&S) 491] , State of Orissa v. Commr. of Land Records & Settlement [State of Orissa v. Commr. of Land Records & Settlement, (1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [Sunita Jain v. Pawan Kumar Jain, (2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537] this Court held that the power to [Ed.: The matter between two asterisks has been emphasised in original as well.] review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication [Ed.: The matter between two asterisks has been emphasised in original as well.] and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible."

(emphasis supplied)

14. In view of the aforesaid, we hold that the award dated 1-10-2003 could not have been reviewed by the Collector, and thus we allow these appeals and quash the order dated 4-7-2004 passed by the Collector in Review Award No. 16/03-04 as well as the order dated 4-3-2010 passed by the Delhi High Court in Naresh Kumar v. State (NCT of Delhi) [Naresh Kumar v. State (NCT of Delhi), 2010 SCC OnLine Del 977 : (2010) 174 DLT 355] . The appellants shall thus be entitled to the compensation as awarded in terms of the award of the Land Acquisition Collector dated 1-10-2003, and the supplementary award dated 27-10-2004. No orders as to costs."

2. Dr. (Smt) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya Sitapur (U.P.) and others reported in (1987) 4 SCC 525. The relevant para on which reliance has been placed is 11, which is quoted hereunder for ready reference:-

"11. It is now well established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi-judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing her order dated 24-1-1987 by her order dated 7-3-1987. The said order of the Vice-Chancellor dated 7-3-1987 was a nullity."

3. Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others reported in (2010) 9 SCC 437. The relevant paras on which reliance has been placed are 12 to 14, which are quoted hereunder:-

12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar [AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh [AIR 1966 SC 641] .)

13. In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844 : AIR 1970 SC 1273] , Major Chandra Bhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321] , Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya [(1987) 4 SCC 525 : 1987 SCC (L&S) 491 : AIR 1987 SC 2186] , State of Orissa v. Commr. of Land Records and Settlement [(1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [(2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537] this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible."

4. Sunita Jain Vs. Pawan Kumar Jain and others reported in (2008) 2 SCC 485. The relevant paras on which reliance has been placed are 33 and 34, which are quoted hereunder:-

33. It is also well settled that power of review is not an inherent power and must be conferred on a court by a specific or express provision to that effect. (Vide Patel Narshi Thakershi v. Pradyumansinghji

Arjunsinghji [(1971) 3 SCC 844] .) No power of review has been conferred by the Code on a criminal court and it cannot review an order passed or judgment pronounced.

34. In Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169 : 2001 SCC (Cri) 113] this Court held that a High Court has no jurisdiction to alter or review its own judgment or order except to the extent of correcting any clerical or arithmetical error. It deprecated the practice of filing criminal miscellaneous petitions after disposal of main matters and issuance of fresh directions in such petitions. The Court said: (SCC p. 175, para 10) "10. Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error."

5. H.C. Suman and another Vs. Rehabilitation Ministry Employees Cooperative House Building Society Ltd New Delhi and others reported in 1991 4 SCC 485. The relevant paras on which reliance has been placed are 33 and 34, which are quoted hereunder:-

33. The question of validity of the subsequent Notification dated August 29, 1990 whereby the earlier Notification dated October 27, 1987 was rescinded may now be considered. As noticed earlier, the Lt. Governor had passed the quasi-judicial order on August 19, 1985 in an appeal filed by the Society against the order of the Registrar declining amendment of the bye-law concerned. Relevant findings of the Lt. Governor along with the reasons therefor have already been extracted above. We have already pointed out that what weighed with the Lt. Governor in passing that order was that persons for whose benefit the bye-law was sought to be amended had become members of the Society many years ago, that their names figured even in the list of members which was supplied by the Society to the Department of Rehabilitation and which formed the basis for allotment of land to the Society and that it would be neither fair nor just to leave them in the lurch now by depriving them of their membership when they cannot become members of any other society. It was pointed out by the Lt. Governor that the proposed amendment in the bye-law was "designed to regularise such of the members". From the tenor of this order there can be no manner of doubt that the order was passed with a view to ensure that the persons who had become members of the Society many years ago should get the benefit of the amended bye-law by having their membership regularised. Such members could obviously get the benefit of the bye-law only if it was made retrospectively effective. The order of the Lt. Governor did not contemplate fresh enrolment of those persons as members after the passing of that order and the bye-law being

amended in consequence thereof but it contemplated regularisation of their membership. This clearly indicated that those persons were sought to be treated as members as from the dates on which they had factually become members of the Society. We have also pointed out above that in our opinion in having the Notification dated October 27, 1987 issued, the Lt. Governor only took steps to give effect to the quasi-judicial order passed by him on August 19, 1985 so that the purpose of that order could be achieved. This being the true nature of the Notification dated October 27, 1987, the Lt. Governor cannot be said to have in any manner reviewed the quasi-judicial order dated August 19, 1985. On the other hand, the subsequent Notification dated August 29, 1990 even though purported to rescind the earlier Notification dated October 27, 1987 only it had keeping in view the nature and purpose of the Notification dated October 27, 1987 really the effect of reviewing and nullifying the quasi-judicial order passed by the Lt. Governor on August 19, 1985. In a matter such as this, it is the substance and the consequence of the Notification dated August 29, 1990 which has to be kept in mind while considering the true import of that notification. It is settled law that a quasi-judicial order once passed and having become final cannot be reviewed by the authority passing that order unless power of review has been specifically conferred. The quasi-judicial order dated August 19, 1985, as seen above, had been passed by the Lt. Governor under Section 76 of the Act. No power to review such an order has been conferred by the Act. In Godde Venkateswara Rao v. Government of A.P. [(1966) 2 SCR 172 : AIR 1966 SC 828] an order had been passed by the government under Section 62 of the Andhra Pradesh Panchayat Samithies and Zila Parishads Act, 1959, it was subsequently reviewed. The validity of this order of review was in question in that case. No power of review had been conferred for review of an order passed under Section 62. What was, however, argued was that the government was competent to review that order in exercise of power conferred by Section 13 of the Madras General Clauses Act, 1891. Repelling this argument, it was held:

"The learned counsel for the State then contended that the order dated April 18, 1963, could itself be sustained under Section 62 of the Act. Reliance is placed upon Section 13 of the Madras General Clauses Act, 1891, whereunder if any power is conferred on the Government, that power may be exercised from time to time as occasion requires. But that section cannot apply to an order made in exercise of a quasi-judicial power. Section 62 of the Act confers a power on the Government to cancel or suspend the resolution of a Panchayat Samithi, in the circumstances mentioned therein, after giving an opportunity for explanation to the Panchayat Samithi. If the Government in exercise of that power cancels or confirms a resolution of the Panchayat Samithi, qua that order it becomes functus officio. Section 62, unlike Section 72, of the Act does not confer a power on the Government to review its orders. Therefore, there are no merits in this contention."

34. We are aware that the Notification dated August 29, 1990 purports to rescind the earlier Notification dated October 27, 1987 only and does not speak in clear terms that the quasi-judicial order dated August 19, 1985 was also being rescinded. On the facts and circumstances of this case, as emphasised above, we are of the

opinion that this circumstance hardly makes any difference inasmuch as even though the quasi-judicial order dated August 19, 1985 has not been expressly nullified, it has certainly for all practical purposes been nullified by necessary implication. This, in our opinion, could not be done and the Notification dated August 29, 1990 is ultra vires on this ground alone."

13. It is further submitted that there is only one exception where in absence of any statutory provisions, the authorities can review their earlier order i.e. if the order has been obtained by fraud. In support thereof, they placed reliance on the judgment passed by Hon'ble Supreme Court in the case of Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. reported in (1996) 5 SCC 550. The relevant paras i.e. 22, 22 and 23 are being quoted hereunder for ready reference:-

"20. By filing letter No. 2775 of 26-8-1991 along with the review petition and contending that the other letter, namely, letter No. 2776 of the even date, was never written or issued by the respondent, the appellant, in fact, raised the plea before the Commission that its judgment dated 16-11-1993, which was based on letter No. 2776, was obtained by the respondent by practising fraud not only on the appellant but on the Commission too as letter No. 2776 dated 26-8-1991 was forged by the respondent for the purpose of this case. This plea could not have been legally ignored by the Commission which needs to be reminded that the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraus et jus nunquam cohabitant). It has been repeatedly said that fraud and deceit defend or excuse no man (Fraus et dolus nemini patrocinari debent).

21. In Smith v. East Elloe Rural Distt. Council [1956 AC 736 : (1956) 1 All ER 855 : (1956) 2 WLR 888] the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, Lazarus Estates Ltd. v. Beasley [(1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502] (QB at p. 712), Denning, L.J. said:

"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from

indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. (See: Benoy Krishna Mukerjee v. Mohanlal Goenka [AIR 1950 Cal 287] ; Gajanand Sha v. Dayanand Thakur [AIR 1943 Pat 127 : ILR 21 Pat 838] ; Krishnakumar v. Jawand Singh [AIR 1947 Nag 236 : ILR 1947 Nag 190] ; Devendra Nath Sarkar v. Ram Rachpal Singh [ILR (1926) 1 Luck 341 : AIR 1926 Oudh 315] ; Saiyed Mohd. Raza v. Ram Saroop [ILR (1929) 4 Luck 562 : AIR 1929 Oudh 385 (FB)] ; Bankey Behari Lal v. Abdul Rahman [ILR (1932) 7 Luck 350 : AIR 1932 Oudh 63] ; Lekshmi Amma Chacki Amma v. Mammen Mammen [1955 Ker LT 459] .) The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (Ishwar Mahton v. Sitaram Kumar [AIR 1954 Pat 450]) or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh [AIR 1958 Pat 618 : 1958 BLJR 651] ; Tara Bai v. V.S. Krishnaswamy Rao [AIR 1985 Kant 270 : ILR 1985 Kant 2930] .)

14. On the other hand, learned Standing Counsel has submitted that under the Rules, 1963 though the authorities have no power either to recall or review its earlier order even then if the order has been obtained by playing fraud or it has been passed ex-parte, in that case, the order can be reviewed or recalled even in absence of power of review and recall in the statute/Rules.

15. After hearing learned counsel for the parties; going through the Act, 1963; record and the judgments relied by counsel for the petitioners, the position which emerges out is that under the Rules, 1963, the revisional authority is not empowered either to recall or review its order passed earlier.

16. In case of recall of earlier order, it has been held by Hon'ble Supreme Court in the case of Suresh Chandra Sharma (supra), wherein it has been held that in absence of statutory provision recall of order could be made if the order has been passed ex-parte, which is not the case of the State. In the present case revisions were allowed after hearing both the parties, it were not an ex-parte orders. Hence, recall orders are nullity.

17. It is also not the case of the respondents-State either in the counter affidavit or during the course of argument that revisional order allowing the revisions were obtained by playing fraud by the petitioners.

18. It is settled law that power of review can be exercised only when the statute provides or permits for the same and in absence of the same, the review application is not maintainable. The review is a creation of statute.

The jurisdiction of review can be derived only from the statute and thus, order passed on different dates dismissing the revisions by reviewing its earlier order is nullity being without jurisdiction.

19. From the discussions made hereinabove, the order dated 07.03.2019 passed by the respondent no. 1 recalling the earlier orders passed on different dates whereby the revisions were allowed and the orders passed on different dates whereby the revisions have been dismissed are hereby quashed.

20. For the foregoing reasons, the writ petitions are allowed.[43]"

That the Hon'ble Court given finding that the non judicial court has no power to review and recall their own order, it is only vested in the Judicial court, the judgement is contradictory to the earlier judgement given by the Hon'ble Court, of the same bench, same is required for consideration of its vide scope and required to widely discuss by the larger bench of the Hon'ble Court or Parliament may framed the rule and amend the law as is in existing, otherwise problem may not be sought out.

5.15 Judgment of Allahabad High Court in Case of Raman Agnihotri Versus Commissioner, Workmen's Compensation, Kanpur and others Civil Misc Writ Petition No. 61531 of 2008 decided on 28.11.2008

That the Hon'ble Justice SP Mehrotra J, of Allahabad High Court has hold in the in Case of Raman Agnihotri Versus Commissioner, Workmen's Compensation, Kanpur and others Civil Misc Writ Petition No. 61531 of 2008 decided on 28.11.2008 held that the Commissioner of Employee's Compensation Act, 1923 has no power to review of his own order and several other discussion has also been held, the order of the Hon'ble Court dt. 28.11.2008 is reproduce here as under,

"Hon'ble Justice S.P Mehrotra, J.:— The present writ petition has been filed under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 12.11.2008 (Annexure-5 to the writ petition) passed by the respondent No. 1.

2. It appears that the respondent No. 2 filed an application under section 10 of the Workmen's Compensation Act, 1923 claiming compensation on account of injury sustained by him while working in the establishment/factory of the petitioner. The said application was registered as W.C Case No. 96 of 2003. After the exchange of affidavits between the parties in the said case, and the leading of evidence by both the parties, the respondent No. 1 by the judgment and order dated 6.12.2007 awarded compensation amounting to Rs. 1,72,994.82 to the respondent No. 2. The said amount was to be deposited within 30 days through a Bank

[43] https://indiankanoon.org/doc/148774072/

Draft failing which the petitioner was made liable to pay simple interest @ 6% per annum from the date of incident till the date of payment.

3. Copy of the said judgment and order dated 6.12.2007 has been filed as Annexure-I to the writ petition.

4. It appears that the petitioner thereafter filed restoration application, which was dismissed by the respondent No. 1 by the order dated 31.3.2008 Copy of the said order dated 31.3.2008 has been filed as Annexure-2 to the writ petition.

5. The petitioner, thereafter, filed another application dated 19.5.2008, inter alia, praying for reconsideration of the order dated 6.12.2007 passed by the respondent No. 1. Copy of the said application has been filed as Annexure-3 to the writ petition.

6. By the order dated 12.11.2008, the respondent No. 1 has dismissed the said application dated 19.5.2008 filed on behalf of the petitioner. It is, inter alia, stated in the said order dated 12.11.2008 that as the case has been finally decided on merits by the order dated 6.12.2007 after hearing the parties, there does not appear to be any legal ground for again passing order on merits in view of the application dated 19.5.2008 filed on behalf of the petitioner.

7. I have heard Shri S.N Dubey, learned Counsel for the petitioner, and perused the record.

8. It is submitted by Shri S.N Dubey that it is open to the respondent No. 1 to correct mistakes apparent on the face of record in its order, and therefore, the said application dated 19.5.2008 has been wrongly rejected by the respondent No. 1 by the impugned order dated 12.11.2008

9. Shri S.N Dubey has placed reliance on a decision of the Supreme Court in Mathura Prasad v. Union of India.1

10. I have considered the submissions made by Shri S.N Dubey, learned Counsel for the petitioner, and I find myself unable to accept the same.

11. A perusal of the application dated 19.5.2008 (Annexure-3 to the writ petition) shows that by the said application the petitioner sought reconsideration and review of the judgment and order dated 6.12.2007

12. The said application was not an application merely for correction of mistakes apparent on the face of record but was an application for review of the judgment and order dated 6.12.2007

13. Reference in this regard may be made to a decision of this Court in Virendra Swaroop Srivastava v. Vaishya Brothers and Co. (P) Ltd.,2 (paragraph 48) wherein the distinction between the power to correct clerical/arithmetical mistake and the power of review has been noted.

14. It is relevant to note that sub-rule (2) of Rule 32 of the Workmen's Compensation Rules, 1924 framed under section 32 of the Workmen's Compensation Act, 1923, inter alia, provides that after the judgment is signed, dated and pronounced by the Commissioner, "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".

15. Therefore, the Commissioner may correct clerical or arithmetical mistake arising from any accidental slip or omission in his judgment.

16. However, there is no provision under the Workmen's Compensation Act, 1923 or the Workmen's Compensation Rules, 1924 for review of the judgment by the Commissioner.

17. Section 23 of the Workmen's Compensation Act, 1923 and Rule 41 of the Workmen's Compensation Rules, 1924 make certain provisions of the Code of Civil Procedure, 1908 applicable to proceedings before Commissioners. However, these provisions do not include section 114 or Order XLVII of the Code of Civil Procedure, 1908 which deal with "Review".

18. Hence, while the Commissioner has power to correct clerical or arithmetical mistake arising from accidental slip or omission in his judgment, he has no power to review his judgment.

19. Shri S.N Dubey, learned Counsel for the petitioner has fairly conceded that there is no statutory provision for review of the judgment and order passed by the respondent No. 1 awarding compensation to the respondent No. 2.

20. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji 1971 3 SCC 844 (paragraph 4); Kailash Singh Rajput…Applicant; v. Ram Prakash…Opposite Party. AIR 1979 All 110. (paragraph 9).

21. As there is no statutory provision conferring power of review on the Commissioner under the Workmen's Compensation Act, 1923 specifically or by necessary implication, the Commissioner has no power to review his judgment.

22. In view of the above, it was not open to the respondent No. 1 to review its own judgment and order dated 6.12.2007

23. In the circumstances, I am of the opinion that the application dated 19.5.2008 (Annexure-3 to the writ petition) has rightly been dismissed by the respondent No. 1 by the order dated 12.11.2008

24. As regards the decision in Mathura Prasad case (supra), relied upon by the learned Counsel for the petitioner, the said decision lays down as under (paragraph 14 of the said FLR):

"14. When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under sub-rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses Its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

25. The above decision deals with the scope of judicial review in the matter of departmental enquiry. The said decision has no application to the facts and circumstances of the present case.

26. In view of the above, I am of the view that the writ petition lacks merits, and the same is liable to be dismissed. The writ petition is accordingly dismissed. 27. Petition Dismissed.[44]"

The Hon'ble Court has court has settle that the non – judicial court has no power to review of their own judgment and order, in fact the Hon'ble Court is not settled the correct law, which are required to consideration again.

5.16 Judgment of the Hon'ble Apex Court in Case of Mayan Vs. Mustafa and anther civil appeal No. 6614 of 2021 decided on 08.11.2021

That the Hon'ble Apex Court has held that the High Court has errored in accepted the writ petition and quashed the Commissioner order passed under the Employee's Compensation Act, 1923, from the perusal of judgement of the Hon'ble Court it is made clear that the Hon'ble Apex indirectly has restrain for entertaining recall application, judgement is reproduce herewith as under,

" Leave granted.

The challenge in the present appeal is to an order passed by the learned Single Judge of the High Court of Judicature at Madras on 25.04.2013, whereby an appeal filed by the first respondent was accepted on the ground that the Compensation Commissioner at Trichirapalli has no jurisdiction to entertain the complaint as it is the Compensation Commissioner at Cuddalore, who has the jurisdiction to entertain the complaint.

In an accident, which occurred during the course of employment on 05.03.2001, the appellant lost his right leg which got stuck in a Harvesting Machine. The appellant was working as a worker in the agricultural farm of the respondent since 1997. Signature Not Verified The learned Compensation Commissioner awarded a Digitally signed by Jayant Kumar Arora Date: 2021.11.09 16:55:32 IST Reason: sum of Rs. 1,21,997/- with 12% interest. An appeal against the said award was maintainable only on substantial question of law in terms

[44] www.allahabadhighcourt.in

of Section 30 of the Employees Compensation Act, 1923. But unfortunately, the High Court interfered with the award on the ground of territorial jurisdiction on the make-belief stand that the injured has not pleaded in his claim petition that he was residing within the jurisdiction of the Compensation Commissioner, Trichirapalli.

We find that the High Court should not have in- terfered in an appeal filed against the award of the Compensation Commissioner dealing with the injury of amputation of leg suffered by the appellant during the course of employment. The High Court should have heart to alleviate the loss suffered by the appellant but the order passed by the High Court shows total non-application of mind without any compassion to set aside an award of grant of compensation on account of loss of a limb on wholly untenable ground of lack of territorial jurisdiction. The appellant was a resi- dent of Sriram Nagar, Thiruvaiyaru Town and Thanjavour District, falling within the jurisdiction of Trichirapalli, thus even legally the jurisdiction was that of Compensation Commissioner under Section 21(1)(b) of the Employees Compensation Act, 1923.

In view thereof, we allow the present appeal and set aside the order passed by the High Court and restore the order of the Compensation Commissioner. In addition to the amount already awarded by the Compensation Commissioner, the first respondent shall pay an amount of Rs.1,00,000/- (Rupees One Lakh) to the appellant as Costs, for depriving him the compensation for the last more than 20 years. The due amount shall be paid within a period of two months from today.

Pending interlocutory application(s), if any, is/are disposed of.[45]"

5.17 Judgement of Hon'ble Supreme Court in case of Sangham Tape Co. Versus Hans Raj Civil Appeal No. 2064 of 2002 decided on 27.09.2004

That the Hon'ble Court has held that the an industrial adjudication is governed by the provision of the industrial Disputes Act, 1947 and the Rules framed thereunder. The Rules framed under the Act may provide for applicability of the provisions of the Code of Civil Procedure. Once the Provisions of the Code of Civil Procedure are made application to the industrial adjudication, indisputably the provisions of Order 9 Rule 13 thereof would be attracted. But unlike an ordinary civil court, the Industrial Tribunal and the Labour Courts have limited jurisdiction in that behalf, While an Industrial Court will have Jurisdiction to set aside an ex parte award, but having regard to the provision contained in Section 17-A of the Act, an application therefore must be filed before the expiry of 30 days from the publication thereof, till then Tribunal retain jurisdiction over the dispute referred to it for adjudication, and only up to that date it has the power to entertain an application in connection with such dispute. This is because an award made by an Industrial Court becomes enforceable under section 17-A of the Act on the expiry of 30 days from the date of its publication. Once the award become

[45] https://indiankanoon.org/doc/162760337/

enforceable, the Industrial Tribunal and / or Labour Court become functus officio. order o the Hon'ble Court is quoted below,

" Hon'ble Justice S.B. SINHA, J :

This appeal is directed against a judgment and order dated 30.4.2001 passed by a Division Bench of the Punjab & Haryana High Court in Civil Writ Petition No.8231 of 2000 whereby and whereunder the writ petition filed by the Respondent herein questioning the order of the Labour Court dated 11.5.2000 setting aside an ex parte award in favour of the Respondent herein, was allowed.

FACTS :

The Respondent was appointed as a Machineman by the Appellant in 1980. The Appellant contended that the Respondent had been absenting from duties off and on but he had been allowed to join his duties in different periods. On or about 09.11.1991, a complaint petition was filed by him through the trade union before the Labour Inspector Circle III Jalandhar on an allegation that the management had not provided him and other similarly situated persons duties since 8.11.1991. The said complaint was registered as Ref. No. 87/91 wherein a settlement was arrived at, pursuant whereto or in furtherance whereof the Respondent is said to have received a sum of Rs. 2675.70 in full and final settlement of his dues. Despite the said settlement, on or about 17.11.1992, he allegedly filed a reference petition before the Labour Court, Jalandhar which was marked as Reference No.87 of 1991, claiming his reinstatement with full back-wages, continuity of service and all consequential service benefits.

An ex parte award was passed by the said Labour Court on 5.2.1996.

The Appellant purportedly upon coming to know about the pronouncement of the said ex parte award, moved an application for setting aside the same. By reason of an order dated 11.5.2000, the ex parte award was set aside. Contending that that the Labour Court had no jurisdiction to set aside the ex parte award after a lapse of 30 days from the date of publication of the award, the respondent herein filed a writ petition before the Punjab and Haryana High Court which was marked as Civil Writ Petition No.8231 of 2000. By reason of the impugned judgment, the High Court set aside the order of the Labour Court. Being aggrieved by and dissatisfied therewith, the appellant is in appeal before us.

Mr. Neeraj Kumar Jain, learned counsel appearing on behalf of the Appellant, would submit that having regard to the fact that the provisions of Order IX Rule 13 of the Code of Civil Procedure are applicable to an industrial adjudication, the Labour Court must be held to have ample jurisdiction to set aside an ex parte award, if sufficient cause therefor is shown. The learned counsel would further submit that such exercise of jurisdiction by the Labour Court cannot be limited to a period of 30 days from the date of publication of the award. Reliance, in this connection, has been placed on Anil Sood vs. Presiding Officer, Labour Court II [2001 (2) SCALE 193].

An industrial adjudication is governed by the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act) and the rules framed thereunder. The rules framed under the Act may provide for applicability of the provisions of the Code of Civil Procedure. Once the provisions of the Code of Civil Procedure are made applicable to the industrial adjudication, indisputably the provisions of Order IX Rule 13 thereof would be attracted. But unlike an ordinary Civil Court, the Industrial Tribunals and the Labour Courts have limited jurisdiction in that behalf. An award made by an industrial court becomes enforceable under Section 17A of the Act on the expiry of 30 days from the date of its publication. Once the award becomes enforceable, the Industrial Tribunal and/or Labour Court becomes functus officio.

This Court in Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and Others [(1980) Supp. SCC 420] held that the Tribunal does not become functus officio provided an application for setting aside the award is filed within thirty days of publication of award having regard to the provisions contained in Section 11 of the Act and Rules 22 and 24 of the Industrial Disputes (Central) Rules, 1957 stating : "The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17-A. Under Section 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17-A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent 3, acting on behalf of respondents 5 to 17 on January 19, 1977 i. e, before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal."

The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award but having regard to the provision contained in Section 17A of the Act, an application therefor must be filed before the expiry of 30 days from the publication thereof. Till then Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection with such dispute.

It is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labor Court after one month of the publication of the award.

In view of this Court's decision in Grindlays Bank (supra), such jurisdiction could be exercised by the Labour Court within a limited time frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17A of the Act, the Labour Court or the Tribunal, as the case may be, does not retain any jurisdiction in relation to setting aside of an award passed by it. In other words, upon the expiry of 30 days from the date of publication of the award in the gazette, the same having become enforceable, the Labour Court would become functus officio.

Grindlays Bank (supra) has been followed in Satnam Verma vs. Union of India [(1984) Supp. SCC 712] and J.K. Synthetics Ltd. vs. Collector of Central Excise [(1996) 6 SCC 92].

This Court in Anil Sood (supra) did not lay down any law to the contrary. The contention raised on the part of Mr. Jain to the effect that in fact in that case an application for setting aside an award was made long after 30 days cannot be accepted for more than one reason. Firstly, a fact situation obtaining in one case cannot be said to be a precedent for another. [See Mehboob Dawood Shaikh vs. State of Maharashtra (2004) 2 SCC 362]. Secondly, from a perusal of the said decision, it does not appear that any date of publication of the award was mentioned therein so as to establish that even on fact, the application was made 30 days after the expiry of publication of the award. Furthermore, the said decision appears to have been rendered on concession.

For the foregoing reasons, there is no merit in this appeal which is accordingly dismissed. No costs.[46] ”

5.18 order of Hon’ble High Court in Case of Nirmla and another Versus State of UP and others Writ - C No.2793 of 2022, interim order dt. 25.05.2022

Tha the Hon’ble Court has been pleased and passed the order dt. 25.05.2021, the ex parte award has been passed by the Commissioner of Employee’s Compensation Act, 1923, the respondent has appeared and file recall application, same has been entertained and order of ex parte has been recalled vide order dt. 04.04.2022, claimant has filed aforesaid writ petition the Hon’ble High Court of Lucknow Bench has been pleased and passed the order dt. 25.05.2022 and stayed the ex parte recall order and passed the following order dt. 25.05.2022 is reproduce here as under,

“ Along with the supplementary affidavit, the ordersheet of the case is filed as Annexure No.SA-1 which shows that the defendants were duly appearing before the respondent No.2. In fact, it is specifically noted n the ordersheet that on 18.12.2012, the defendant No.2 was present and arguments were heard and the case was fixed for 15.1.2018. The case was fixed on 7.3.2018. On 7.3.2018 it was noted that parties were heard and fixed for 12.3.2018 for orders. On 12.3.2018, 11.4.2018 was fixed for orders. From the aforesaid ordersheet, it is clear that the defendant was regularly appearing before the Court concerned and had in fact made arguments also. Thereafter, it appears that a recall application is filed by the defendant No.1 which is allowed

[46] 2005(9)SCC331 / www.sci.in

by the impugned order dated 4.4.2022 without considering the aspect that the order was passed after hearing parties. In view thereof, let notice be issued to respondent No.2 to 4. till the next date of listing, the operation of order dated 4.4.2022 shall remain stayed. List in July, 2022.[47]"

5.19 order of Hon'ble High Court in Case of Nirmla and another Versus State of UP and others Writ - C No.9224 of 2022, interim order dt. 25.05.2022

The Hon'ble Division Bench of High Court Lucknow has passed the order for compliance of the ex parte order even though the ex parte order is under sub-judice in the same Hon'ble High Court in Single Bench, the information has been given by the respondent counsel the Hon'ble Court on first date has been pleased to passed the order dt. 22.12.2023 is reproduce herewith as under,

" Learned Standing Counsel prays for and is granted two weeks' time to obtain instructions in the matter. List in the week commencing 9th January, 2023, as fresh.[48]"

That on the next the counsel for the respondent has been appeared in the Court and informed to the Hon'ble Court with regard to earlier pendency of the writ petition in single bench the Hon'ble Court has been pleased and passed the order dt. 10.01.2023 same is reproduce herewith as under,

"Heard learned counsel for the petitioners and Sri Sajjad Hussain, who has appeared on behalf Respondent No.5. Learned counsel for Respondent No.5 says that the writ petition has been filed without disclosing all the facts as are necessary for adjudication. He prays for some time to file counter affidavit. Four weeks time as prayed for is granted to file counter affidavit. Learned Standing Counsel shall also file counter affidavit within same period. Two weeks time thereafter is granted to the learned counsel for the petitioner to file rejoinder affidavit. List this case on 21.02.2023. The copy of the writ petition shall be given to Sri Sajjad Hussain, learned counsel for the Respondent No.5 by the learned counsel for the petitioners. [49]"

5.20 Per Incuriam of Judgments

Judgement of Hon'ble High of Allahabad in Case of Mohd. Ikram & Another vs Dy. Labour Commissioner U.P. decided on 7 May, 2013 is per incuriam (Per incuriam word come in English From Latin meaning is "through lack of case") meaning thereby the Hon'ble Judge oversight and without considering all the relevant facts and precedent of law which were earlier decided in the proceeding of law, the Hon'ble Judge in case of Mohd. Ikram & Another Vs. Dy. Labour Commissioner U.P. has committed a manifest of error not considering the law of precedent in Case of Grindlays Bank LTD Vs. Central Government Industrial Tribunal & Ors Judgement Dt. 12.12.1980 reported1981 AIR 606, 1981 SCR (2) 341 and In Case of Satnam Verma Vs. Union of India and various other judgements of the Hon'ble Apex have not been considered and other judgements of

[47] www.allahabadhighcourt.in
[48] Ibid
[49] www.allahabadhighcourt.in

the Hon'ble Allahabad High Court have not been considered therefore the judgement of Hon'ble High of Allahabad in the Case of Mohd. Ikram & Another vs Dy. Labour Commissioner U.P. decided on 7 May, 2013 is per incuriam as per As per Legal Service India[50]Through carelessness, through inadvertence. 'Per Incuriam' means 'through want of care'. A decision of the Court which is mistaken. A decision of the Court is not a Binding Precedent if given Per Incuriam, i.e. without the Court's attention having been drawn to the relevant authorities, or statutes

5.21 Incuriam of Judgements

indiankanoon.org "The English Courts were the first ones to develop this principle in relaxation of the rule of stare decisis. The quotable in law is avoided and ignored if it is rendered in ignorantium of a statute or other binding authority."51 The Hon'ble Court Allahabad High Court in dealing with in Case of Mohd. Ikram & Another vs Dy. Labour Commissioner U.P. decided on 7 May, 2013 has declared as incuriam due to not considering the precedent of the earlier judgement of Hon'ble Apex Court as mentioned above, therefore in view of the discussion judgement and order dt. 7 May, 2013 is incuriam and have no precedent value.

CHAPTER – 6

6.1 Conclusion

That the Commissioner of Employee's Compensation Act, 1923, has power to recall its own order ex – parte order, in support of said statement I would like to refer the section 23 power of Commissioner under the Employee's Compensation Act, 1923 is quoted below "23. Powers and procedure of Commissioners. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, [and the Commissioner shall be deemed to be a Civil Court for all the purposes of [section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)]].[52]" section 23 is provided that the Commissioner of Employee's Compensation, Act, 1923 shall be deemed to be a Civil Court for all the purposes, that is why power of recall of ex parte order is also vested in his power, and also Workmen's Compensation Rules 1924's proviso of Rule 41 is provided that the Court of Employee's Compensation Commissioner is having power of Code of Civil Procedure Order 9 Rule 13 and 15 to 30, Rule 41 of

[50] https://www.legalserviceindia.com/legal/article-6684-an-analysis-of-concept-of-per-incuriam.html#:~:text=Through%20carelessness%2C%20through%20inadvertence.,the%20relevant%20authorities%2C%20or%20statutes.
[51] https://indiankanoon.org/docfragment/155199616/?formInput=per%20incuriam
[52] Employee's Compensation Act, 1923 42nd Edition, 2022 p-54 published by EBC

Workmen's Compensation Rules, 1924 is quoted below, "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.[53]" the Workmen's Compensation Rules, 1924, Rule 41 is providing the power of Code of Civil Procedure, 1908, Order 9 Rule 13 and 15 to 30, same is reproduce here as under "13. Setting aside decree ex parte against defendants. — In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit: Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also: [Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.] 2[Explanation. Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.[54]]" as per section 23 of Employee's Compensation Act, 1923 and Rule 41 of Workmen's Compensation Rules, 1924 and from the plain reading of the Order 9 and Rule 13 of Code of Civil Procedure, 1908, it is crystal clear that the Commissioner of Employee's / Workmen's Compensation is having to recall its ex-parte order, the Hon'ble Apex Court as well as various Hon'ble High Courts has given finding that the Commissioner of Employee's / Workmen's Compensation is having to recall its ex-parte order list of the cases, petition number, date of order and relevant paragraphs are as under

Srl	Party Names	Dt of Decision	By Hon'ble Court	Relevant para	Report in/Case No.

[53] Workmen's Compensation Rules, 1924 42nd Edition, 2022 p-102 published by EBC
[54] Order 9 Rule 13 of CPC, 1908, Edition 2018 Ekta Law Agency p-131

1	Satnam Verma Vs. Union of India	09.12.1984	Supreme Court	Para 7, 8, 9, and 10	AIR 1985 SC 294 & 1984 Supp (1)SCC 712
2	Grindlays Bank LTD Vs Central Government Industrial Tribunal & Ors	12.12.1980	Supreme Court	Para Second Third Fourth And five	1981 AIR 606, 1981 SCR (2) 341
3	United India Insurance Co. Ltd. Vs. Workmen's Compensation	17.01.1996	Allahabad	14	1997 ACJ 1028
4	Syndet (India) Private Ltd Vs. Presiding Officer	25.01.2005	Allahabad	3	2005 (2) ESC 1239
5	Raj Bahadur Vs. Presiding Officer	08.01.2010	Allahabad	first , Second and third	Wrt - No. 575 of 2010
6	M/s Universal Cylinders Limited Vs. The Presiding Officer	31.01.2020	Allahabad	Last page	Writ C No. 15333 of 2019
7	Kolandhayee Vs. The Commissioner Labor (Commissioner Workmen's Compensation Act)	19.04.2010	Madras	Last page	W.A. No. 2505 of 2001
8	A.V. Varghese Vs. N.K. Kumaran	10.08.2011	Kerala	4 and 5	WP (C) No. 14248 of 2009

That the various Hon'ble Courts has given finding that the (Workmen's / Employee's Compensation Commissioner has no power to recall its own ex parte order, they have refer the section 6 of Employee's Compensation Act, 1923 in the said section there no power of review has been given by the Act and in Rule 32 (2) of Workmen's Compensation Rules, 1924 is providing that the Commissioner has no power to alter the judgement after its pronouncement only clerical or arithmetical mistake is allowed, Rule 32 (2) of Workmen's Compensation Rules, 1924 is reproduced here as under , "(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.[55]" on the basis of the Rule 32 (2) of Workmen's Compensation Rules, 1924 the various Hon'ble

[55] Workmen's Compensation Rules 1924, Rules 32(2)

Court has given finding in the flowing judgements that the Commissioner has no power to recall its own ex-parte order, the table of the judgment is as under

Srl	Party Names	Dt of Decision	By Hon'ble Court	Relevant para	Report in/Case No.
1	Marshal Securities Vs. The Presiding Officer Labour Court (2) UP Kanpur and 2 others	13.09.2006	Allahabad High Court	31 and 34	Writ – C No. 33855 of 2006
2	Mohd. Ikram & Another Vs. Dy. Labour Commissioner, U.P. Saharanpur and others	07.05.2013	Allahabad High Court	6	Civil Misc Writ Petition No. 15504 of 2011
3	Balaji Stone Crusher Throu, Partner Kiran Saini and other connected matter Vs. State of UP throu Geology and Mines and Ors	02.08.2022	Allahabad High Court, Lucknow	11	Writ – C No. 7606 of 2019
4	Raman Agnihotri Vs. Commissioner, Workmen's Compensation, Kanpur and others	28.11.2008	Allahabad High Court	21, 25	Civil Misc. Writ Petition No. 61531 of 2008
5	Mayan Vs. Mustafa and another	08.11.2021	Supreme Court of India	2	Civil Appeal No. 6614 of 2021
6	Sangam Tape Co. Vs. Hans Raj	27.09.2004	Supreme Court of India	6, 7, 8, 12	Civil Appeal No. 2064 of 2002
7	Nirmla and Another Vs. State of Uttar Pradesh and others	25.05.2022	Allahabad High Court Lucknow bench Lucknow	1, 2, 3 and 4	Writ-C No. 2793 of 2022
8	Nimla and Another Vs. State of UP & Others	22.12.2022 & 10.01.2023	Allahabad High Court Lucknow bench Lucknow	1 and 2	Writ – C No. 9224 of 2022

Judgement of Hon'ble High of Allahabad in Case of Mohd. Ikram & Another vs Dy. Labour Commissioner U.P. decided on 7 May, 2013 is per incuriam (Per incuriam word come in English From Latin meaning is "through lack of case") meaning thereby the Hon'ble Judge oversight and without considering all the relevant

facts and precedent of law which were earlier decided in the proceeding of law, the Hon'ble Judge in case of Mohd. Ikram & Another Vs. Dy. Labour Commissioner U.P., Marshal Securities Vs. The Presiding Officer Labour Court (2) UP Kanpur and 2 others, Balaji Stone Crusher Throu, Partner Kiran Saini and other connected matter Vs. State of UP throu Geology and Mines and Ors, Raman Agnihotri Vs. Commissioner, Workmen's Compensation, Kanpur and others, Mayan Vs. Mustafa and another, Sangam Tape Co. Vs. Hans Raj, Nirmla and Another Vs. State of Uttar Pradesh and others most of the judgement (supra) is recent judgement of 2021 and 22 and of old up to 2000, has committed a manifest of error not considering the law of precedent in Case of Grindlays Bank LTD Vs. Central Government Industrial Tribunal & Ors Judgement Dt. 12.12.1980 reported1981 AIR 606, 1981 SCR (2) 341 and In Case of Satnam Verma Vs. Union of India and various other judgements of the Hon'ble Apex have not been considered and other judgements of the Hon'ble Allahabad High Court have not been considered therefore the judgement (supra) are per incuriam as per As per Legal Service India[56]Through carelessness, through inadvertence. 'Per Incuriam' means 'through want of care'. A decision of the Court which are mistaken. A decision of the Court is not a binding precedent if given Per Incuriam, i.e. without the Court's attention having been drawn to the relevant authorities, or statutes, in view of the above the Employee's / Workmen Compensation Commissioner has power to recall its own ex parte order, accordingly I am of the view that the Employee's / Workmen Compensation Commissioner has power to recall its own ex parte order / award.

6.2 Suggestion

1. That the Rule 32(2) of Workmen's Compensation Rules, 1924 is contradictory to the Rule 41 of Workmen's Compensation Rules, 1924, Rule 32(2) of Workmen's Compensation Rules, 1924 is reproduce as under ""(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" and Rule 41 of Workmen's Compensation Rules, 1924 is reproduce here as under, "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" in fact Rule 32(2)

[56] https://www.legalserviceindia.com/legal/article-6684-an-analysis-of-concept-of-per-incuriam.html#:~:text=Through%20carelessness%2C%20through%20inadvertence.,the%20relevant%20authorities%2C%20or%20statutes.

of Workmen's Compensation Rules, 1924 says after signing of the order – judgement, Commissioner has no power to addition, alteration, modification other than Clerical and Arithmetical mistake, and in other hand Rule 41 of Workmen's Compensation Rules, 1924, the Commissioner has power of Order 9 Rule 13 and 15 to 30, which provide power of recall of ex parte order and Section 23 of the Employee's Workmen Compensation Act, 1923 says that the Commissioner has all power of civil court, then the Rule 32(2) and 41 as well as Section 23 of Employee's Compensation Act, 1923 are contradictory therefore Rule 32(2) of Workmen's Compensation Rules, 1924 is liable be omitted and amended to the extend to provide power to Employee's Compensation Commissioner to recall his own ex parte order in the interest of justice to avoiding difficulty to the litigant as well as presiding officer for deciding the case / claim in accordance with law.

2. That the judgments of the Hon'ble Court as mention below is required for fresh consideration, the following judgment finding is contrary to the Act and various other judgement of the Hon'ble Court, the table of judgement which requires fresh consideration are as under

Srl	Party Names	Dt of Decision	By Hon'ble Court	Relevant para	Report in/Case No.
1	Marshal Securities Vs. The Presiding Officer Labour Court (2) UP Kanpur and 2 others	13.09.2006	Allahabad High Court	31 and 34	Writ – C No. 33855 of 2006
2	Mohd. Ikram & Another Vs. Dy. Labour Commissioner, U.P. Saharanpur and others	07.05.2013	Allahabad High Court	6	Civil Misc Writ Petition No. 15504 of 2011
3	Balaji Stone Crusher Throu, Partner Kiran Saini and other connected matter Vs. State of UP throu Geology and Mines and Ors	02.08.2022	Allahabad High Court, Lucknow	11	Writ – C No. 7606 of 2019
4	Raman Agnihotri Vs. Commissioner, Workmen's Compensation, Kanpur and others	28.11.2008	Allahabad High Court	21, 25	Civil Misc. Writ Petition No. 61531 of 2008
5	Mayan Vs. Mustafa and another	08.11.2021	Supreme Court of India	2	Civil Appeal No. 6614 of 2021

6	Sangam Tape Co. Vs. Hans Raj	27.09.2004	Supreme Court of India	6, 7, 8, 12	Civil Appeal No. 2064 of 2002
7	Nirmla and Another Vs. State of Uttar Pradesh and others	25.05.2022	Allahabad High Court Lucknow bench Lucknow	1, 2, 3 and 4	Writ-C No. 2793 of 2022
8	Nimla and Another Vs. State of UP & Others	22.12.2022 & 10.01.2023	Allahabad High Court Lucknow bench Lucknow	1 and 2	Writ – C No. 9224 of 2022

Judgement of Hon'ble High of Allahabad in Case of Mohd. Ikram & Another vs Dy. Labour Commissioner U.P. decided on 7 May, 2013 is per incuriam (Per incuriam word come in English From Latin meaning is "through lack of case") meaning thereby the Hon'ble Judge oversight and without considering all the relevant facts and precedent of law which were earlier decided in the proceeding of law, the Hon'ble Judge in case of Mohd. Ikram & Another Vs. Dy. Labour Commissioner U.P., Marshal Securities Vs. The Presiding Officer Labour Court (2) UP Kanpur and 2 others, Balaji Stone Crusher Throu, Partner Kiran Saini and other connected matter Vs. State of UP throu Geology and Mines and Ors, Raman Agnihotri Vs. Commissioner, Workmen's Compensation, Kanpur and others, Mayan Vs. Mustafa and another, Sangam Tape Co. Vs. Hans Raj, Nirmla and Another Vs. State of Uttar Pradesh and others most of the judgement (supra) is recent judgement of 2021 and 22 and of old up to 2000, has committed a manifest of error not considering the law of precedent in Case of Grindlays Bank LTD Vs. Central Government Industrial Tribunal & Ors Judgement Dt. 12.12.1980 reported1981 AIR 606, 1981 SCR (2) 341 and In Case of Satnam Verma Vs. Union of India and various other judgements of the Hon'ble Apex have not been considered and other judgements of the Hon'ble Allahabad High Court have not been considered therefore the judgement (supra) are per incuriam as per As per Legal Service India[57]Through carelessness, through inadvertence. 'Per Incuriam' means 'through want of care'. A decision of the Court which are mistaken. A decision of the Court is not a binding precedent if given Per Incuriam, i.e. without the Court's attention having been drawn to the relevant authorities, or statutes, therefore aforesaid judgement are liable to be considered by the Hon'ble larger bench for avoiding conflict by the litigant as well as president officer and appeal Court for accepting the appeal and petition in the interest of justice.

3. That the Legislation may amend the Employee's Compensation Act and Rule and established the Court of Compensation Commissioner and provide power to trial and decide the case on its merits including right of recall it the order is ex parte, even though if the ex – parte order may be on merit, if recall application is file

[57] https://www.legalserviceindia.com/legal/article-6684-an-analysis-of-concept-of-per-incuriam.html#:~:text=Through%20carelessness%2C%20through%20inadvertence.,the%20relevant%20authorities%2C%20or%20statutes.

in bonafide manner, the Commissioner may impowered to entertained and decided in accordance with law, after providing opportunity of hearing to the effected parties.

4. That the Legislation may framed the for establishing the Compensation Commissioner Court in each District of India, and in each State Revisional / Appealable Court for proper adjudication of the claim cases.

5. That the Legislature may amend and insert the provision of speedy disposal of the claim cases filed before Employee's Compensation Court within time framed period, disposal in time bound manner.

6. That the process of filing of the case is required to be considered again, and process of filing of cases may make easy for the purpose of easy excess to the layman.

7. That the parent Act is Workmen's Compensation Act, 1923 and amended as Employee's Compensation Act, 1923, the Rule of Act is as Workmen Compensation Rules, 1924, in the Rule Workmen is liable to be deleted and Employee's may be added for proper naming of Act and Rule is required.

8. That the order of Employee's Compensation Act and Rule is liable to be revisable in the Court of Session Court, and provision of Revision is liable to be added.

9. That the Act and Rule is liable to be amended on information of any persons i.e. informer Commissioner may register the case and proceed and seek the report to concerned police station and spot visit option may also be added

CHAPTER – 7

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Article

1. Compensation is a broad term that refers to anything that a business provides to an employee in exchange for their effort. This article was written by Denzel a Consultant at Industrial Psychology Consultants (Pvt) Ltd
2. Employees Compensation Act, 1923: Amazing facts to know about it This article is written by Madhuri Pilania, a first-year student pursuing BBA.LLB from Symbiosis Law School, Noida. This article deals with the Employees Compensation Act, 1923.

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