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IN THE HIGH COURT OF DELHI

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FAO No.708/2003

National Insurance Co. Ltd. Appellants
through: Ms.Shantha Devi Raman, Adv.

VERSUS

Smt.Sheela & Ors. Respondent
through: Ms.Deepali Gupta, Adv.

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DATE OF DECISION:
07.04.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.** (Oral)

1. The appeal questions the legality of an order dated 25.8.2003 passed by the Commissioner Workmen's Compensation awarding compensation to the respondents on account of death of Sheetal Prasad, the husband of respondent No.1, father of respondents 2 to 4 and the son of respondent No.5. Being not in dispute that the deceased was a driver under respondent No.6 and was driving vehicle No. DL 4CJ 3320 when it was involved in an accident and as a result deceased suffered injuries which proved fatal as also the

wages, the Commissioner Workmen's Compensation proceeded to compute the compensation payable restricting the wages to the maximum amount under the Workmen's Compensation Act i.e. Rs.4,000/- per month.

2. The only issue which requires attention of this court in appeal is whether liability to pay could be fastened on the appellant.

3. Case projected in the appeal by the appellant is that while obtaining the insurance cover for the vehicle in question the employer i.e. respondent No.6 did not pay additional premium to cover the risk arising out of or relatable to the injury or death of the driver and hence the Commissioner Workmen's Compensation could not fasten liability on the appellant.

4. Learned counsel for the appellant draws attention of this court to the finding in the penultimate paragraph of the impugned order where the Commissioner Workmen's Compensation has recorded that additional premium was paid when policy of insurance was obtained.

5. A perusal of the record of the Commissioner Workmen's Compensation shows that while filing its statement of defence, the appellant never raise the plea as is sought to be projected in the instant appeal. Admitting that the vehicle

was insured, battle was fought by the appellant premised on the plea that the deceased was not possessed of a valid driving license. It was urged that the insurance company was entitled to avoid liability to indemnify the insured if term of the policy was violated. It was urged that it was a term of the policy that the insured would not entrust the vehicle to a person not possessing a valid driving license.

6. Indeed, the policy in question was not proved during trial before the Commissioner Workmen's Compensation. Nobody stepped into the witness box to prove the premium paid.

7. Under the circumstances I fail to understand as to how the Commissioner Workmen's Compensation recorded a finding of fact that additionally premium had been paid to cover the risk arising of the death or injury to the driver of the vehicle.

8. But, on said account the appellant cannot succeed viz-a-viz the claimants.

9. The reason is obvious. The insurance company i.e. the appellant ought to have taken an appropriate defence and prove the same. Having not taken the defence in question it would not be permissible for the insurance company to urge grounds in appeal which would require a defence to be taken

and proved.

10. I thus uphold the award in favour of the claimants but on a different process of reasoning.

11. Noting decisions that where due to technicalities of the law the insurance company is made liable to satisfy the third party rights recovery rights can be granted to the insurance company against the insured. One such decision is reported as Swaran Singh & Ors. Vs. New India Assurance Co. Ltd (2004) 3 SCC 297.

12. I accordingly dispose of the appeal by affirming the award but simultaneously granting recovery rights to the appellant against respondent No.6. However I clarify that the said recovery rights would be enforced by filing a suit for recovery of the amount which insurance company has paid to respondents 1 to 5. On proof of the terms of the policy of insurance the appellant would be entitled to recover amount from respondent No.6 paid pursuant to the impugned award to the claimants but only if it is successfully established that additional premium to cover risk liability on account of injury or death to the driver of the vehicle was not paid.

13. As regards the claimants I record satisfaction of the award in that the claimants have received the amount due and payable under the impugned order.

14. No costs.
15. TCR may be returned forthwith.

April 07, 2008
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PRADEEP NANDRAJOG, J.