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

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Date of Decision: 30th November, 2016

+ FAO 35/2012 & CM No.1223/2012

24 **ORIENTAL INSURANCE CO LTD** Appellant
Through: Mr. A.K. Soni, proxy counsel.

versus

KAMAL DEV SINGH & ORS Respondents
Through: Mr. Deepak Maharaj and Mr.
Akhilendra N. Singh, Adv. for
R1.
Mr. D.K. Nag, Adv. for IRDA.
Mr. Sukhbir Singh and Mr.
Nishant Singh, Adv. for R3.

+ FAO 106/2012 & CM No.4390/2012

25 **UNITED TRAILER SERVICES** Appellant
Through: Mr. Sukhbir Singh and Mr.
Nishant Singh, Adv.

versus

KAMAL DEV SINGH & ORS Respondents
Through: Mr. Deepak Maharaj and Mr.
Akhilendra N. Singh, Adv. for
R1.
Mr. A.K. Soni, proxy counsel
for Oriental Insurance Co. Ltd.
Mr. D.K. Nag, Adv. for IRDA.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. Vide order dated 08th December, 2011, the Commissioner,

Employees' Compensation awarded compensation of Rs.4,23,580/- to respondents No.1 and 2.

2. The accident dated 12th August, 2008 resulted in the death of Sunil Kumar Singh who was employed as a driver on truck bearing No. HR 38L 4366 owned by the appellant in FAO 106/2012 and insured by the appellant in FAO 35/2012.

3. The deceased was survived by his parents who filed the application for compensation before the Commissioner, Employees' Compensation. The Commissioner, Employees' Compensation held that the deceased got down from the insured vehicle and was hit by some unknown vehicle which resulted in his death. The Commissioner, Employees' Compensation awarded compensation of Rs.4,23,580/- and granted recovery rights to the appellant in FAO 35/2012 to recover the award amount from the appellant in FAO 106/2012.

4. Learned counsel for the appellant in FAO 106/2012 submits that the deceased, Sunil Kumar Singh was crushed under the insured vehicle and, therefore, the order with respect to the recovery rights be set aside. Reliance is placed on the statement of eye witness, Dilip Kumar Pandey placed on record as Annexure P1.

5. Learned counsel for the appellant in FAO 35/2012 urged that the appellant is not liable to pay compensation because the deceased was hit by some unknown vehicle. It is submitted that the insurance company can be held liable only if the deceased would have died in accident with the insured vehicle.

6. This Court is of the view that the Commissioner, Employees' Compensation has not given a reasoned finding on the aspect as to whether the deceased died due to the accident with the insured vehicle

or some unknown vehicle and, therefore, the matter needs to be remanded back. The impugned order is set aside insofar as the Commissioner, Employees' Compensation has granted recovery rights to Oriental Insurance Co. Ltd. to recover the award amount from the insured, United Trailer Services. The Commissioner, Employees' Compensation shall hear the parties and pass a fresh order on the issue as to whether the deceased died due to the accident with the insured vehicle or some unknown vehicle. If it is held that the deceased died due to the accident with insured vehicle, the insurance company would not be entitled to the recovery rights. However, if the deceased died due to the accident with an unknown vehicle, the Commissioner, Employees' Compensation shall still consider whether the insurance company is entitled to the recovery rights against the insured.

7. Vide order dated 15th January, 2016, this Court had issued the notice to IRDA. This Court is of the view that IRDA should re-visit the terms and conditions of the insurance policy, more particularly with respect to the liability of the insurance company under the Employees Compensation Act. The necessity of IRDA re-visiting the terms and conditions is necessary because the insurance company covers the liability of the insured under the Employees Compensation Act and it has to be considered whether the insurance company can deny the claim in cases where the driver of the offending vehicle meets with an accident with some unknown vehicle.

8. This Court is of the prima facie view that the liability of the employer and insurance company is absolute if an employee meets with an accident during the course of his employment, whether with the insured vehicle or some other vehicle. IRDA shall consider the same and lay down the guidelines with respect to the liability of

insurance company in such matters. IRDA shall place its decision before the Commissioner, Employees' Compensation. The Commissioner, Employees' Compensation shall consider the decision of IRDA before deciding the matter afresh.

9. The appellants in both these appeals shall appear before the Commissioner, Employees' Compensation on 12th January, 2017 at 02:00 P.M. However, respondents No.1 and 2 are not required to appear before the Commissioner, Employees' Compensation.

10. Respondents No.1 and 2 have already received 50% of the award amount deposited by Oriental Insurance Company with the Commissioner, Employees' Compensation. The Commissioner, Employees' Compensation is directed to release the balance amount deposited by Oriental Insurance Company to respondents No.1 and 2 in equal shares by transferring the same to their savings bank accounts near the place of their residence in District Chapra, Bihar.

11. Pending applications are disposed of.

12. This Court appreciates the assistance rendered by Mr. D.K. Nag, learned counsel for IRDA in these matters.

13. The record of Commissioner, Employees' Compensation be returned back forthwith.

14. Copy of this judgment be given *dasti* to learned counsels for the parties as well as Mr. D.K. Nag, learned counsel for IRDA. Mr. D.K. Nag, learned counsel for IRDA shall place the copy of this judgment before the IRDA.

NOVEMBER 30, 2016
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J.R. MIDHA, J.