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

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Date of Decision: 25th October, 2016

+ **FAO 379/2014 & CMs 19553/2014, 19555/2014**

**NEW INDIA ASSURANCE COMPANY
LIMITED**

..... Appellant

Through: Mr.Sanyam Tandon, Advocate for
Mr.Abhishek Kumar, Advocate

versus

SANTOSH & ORS.

..... Respondents

Through: Mr.Babu Malayil, Ms.Binita
Jaiswal, Advocates for Respondent
No.2.
Mr. Dipak K. Nag, Advocate for
IRDA

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

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 7th August, 2014 whereby the Commissioner, Employee's Compensation has awarded compensation of Rs.8,31,920 to respondent no.1.
2. On 3rd August, 2013, late Santosh was fitting the glass on the windows of the second floor of property No.A-15, Pampose Enclave, G.K.-1, New Delhi when he fell down and suffered fatal injuries. Santosh was survived by his widow Shyama, aged 32 years, minor son Master Ajeet, aged 13 years, minor daughter Arpita, aged 8 years and mother Kailasha Devi, aged about 50 years. Shyama, widow of the deceased filed an application for compensation before the Commissioner, Employee's Compensation which was allowed vide

order dated 7th August, 2014.

3. The appellant has challenged the impugned order on the ground that the employer had not provided the safety belt to the deceased and therefore, the insurance company is not liable. Without prejudice, it is submitted that the appellant has deposited the award amount with the Commissioner, Employee's Compensation and the recovery rights be given to the appellant to recover the award amount from respondents no.2 and 3.

4. Learned counsel for respondent no.2 submits that respondent no.2 provided all the safety measures to the deceased and therefore, no case for grant of recovery right is made out.

5. This Court is of the view that the appellant is liable to pay the compensation to respondent no.1 since there is a valid insurance policy to cover the liability of the appellant under the Employees Compensation Act. However, the issue as to whether the appellant is entitled to recovery rights against respondents no.2 and 3 needs be remanded back to the Commissioner, Employee's Compensation.

6. The order of the Commissioner, Employee's Compensation is upheld to the extent that the appellant has been held liable to pay the compensation along with interest thereon to respondent no.1. The appellant has already deposited the award amount with the Commissioner, Employee's Compensation and the same has been disbursed vide order dated 2nd May, 2016.

7. The following additional issue is framed for fresh adjudication by the Commissioner, Employee's Compensation:

(1) Whether the appellant is entitled to recovery rights

against respondents no.2 and 3?

8. The case is remanded back to the Commissioner, Employee's Compensation for fresh adjudication of the aforesaid issue after affording an opportunity to lead evidence to the appellant as well as respondents no.2 and 3.

9. The appellant and respondents no.2 and 3 shall appear before the Commissioner, Employee's Compensation on 12th December, 2016.

10. Vide order dated 12th February, 2016, this Court had issued the notice to IRDA. This Court is of the view that IRDA should revisit the terms and conditions of the insurance policy more particularly condition no.3 with respect to the liability of the insurance company under the Employees Compensation Act. The necessity of IRDA revisiting the terms and conditions is necessary because in cases relating to motor accident claims, the insurance company do not claim recovery rights on the ground that the driver of the offending vehicle was negligent, meaning thereby that the insurance company accepts the liability arising out of the negligence of the driver of the offending vehicle whereas in the present case, the insurance company has raised a plea that they are entitled to recovery rights because of the negligence of the employer in providing the safety measures. There is need to maintain consistency with respect to the liability of the insurance company in such cases.

11. Mr. D.K. Nag, learned counsel for IRDA shall place the decision of IRDA before the Commissioner, Employee's Compensation within a period of ten weeks from today. Mr. D.K.

Nag, Advocate shall place the decision of IRDA before the Commissioner, Employees' Compensation.

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

13. The record of the Commissioner, Employee's Compensation be returned back forthwith.

14. The claimant/respondent no.1 is not required to appear before the Commissioner, Employee's Compensation.

15. The pending applications are disposed of.

16. Copy of this judgment be given *dasti* to counsel for the parties as well as to Mr. D.K. Nag, learned counsel for IRDA.

OCTOBER 25, 2016
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J.R. MIDHA, J.