

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

Date of decision: January 23, 2017

+ **MAC.APP. 177/2008 & C.M.4280/2008**

NATIONAL INSURANCE CO. Appellant

Through: Ms.Hetu Arora Sethi, Advocate

Versus

SHOBHA & ORS.Respondents

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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1. Impugned Award of 11th December, 2007 grants compensation of ₹1,00,000/- with interest @6% p.a. on account of death of Mr. Ganshyam Kumar in a road accident on 6th May, 2003, as the deceased was covered under '*personal accident cover*'.

2. The factual background of this case already stands noted in the impugned Award and so, needs no reproduction. Suffice to note that the premium for the '*personal accident cover*' was duly tendered and received by appellant-insurer. The

Administrative Officer of appellant No.1 had stepped into the witness box as RW-1 and had led evidence.

3. The challenge to the impugned Award by learned counsel for appellant is on the ground that there was violation of terms and conditions of the insurance policy and so, no compensation was payable under the '*personal accident cover*' and so, impugned Award deserves to be set aside.

4. Upon hearing and on perusal of impugned Award and the evidence on record, I find that appellant's witness *RW-1* in his evidence has not stated that there was any violation of terms and conditions of the insurance policy. In such a situation, appellant's counsel cannot be heard to say that three persons were travelling on the motor cycle in question and so, there was any violation of terms and conditions of the insurance policy. In the absence of evidence on record on this aspect, the plea put-forth by appellant's counsel cannot be accepted. Merely because in the evidence of claimant's witness, copy of FIR of this case has been proved, it would not give any occasion to conclude that there was any violation of terms and conditions of the insurance policy in question.

5. In light of the aforesaid, I find no substance in this appeal

and as such this appeal and the application are dismissed.

(SUNIL GAUR)
JUDGE

JANUARY 23, 2017

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