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

% **Date of Decision: 04th July, 2017**

\+ FAO 473/2016

BHARTI AXA GENERAL INSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Navneet Kumar and Mr. Vikas Bhadana, Advocate

versus

PARESHWARI & ORS ..... Respondents

Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocate for respondents No.1 to 5

Ms. Aparajita Sharma, Advocate for Mr. Sanjay Ghosh, ASC for GNCTD

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

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 07th January, 2016 whereby the Commissioner, Employees' Compensation has awarded compensation of Rs.6,70,160/- to respondents No. 1 to 5.

2. On 17th May, 2014, late Khushal Singh was driving truck bearing no. HR-38-N-0917 from Meerut to Delhi during the course of his employment with respondent no. 6. At about 9:30 pm, the driver stopped the truck near CHD Canteen (Post Office) and was crossing the road when he was hit by a scooter which resulted in fatal injuries. The truck in question was validly insured with the appellant and the insurance policy covered the liability under the Employees' Compensation Act in respect of the driver of the truck.

3. The deceased, Khushal Singh was survived by his widow, three sons and mother who have filed application for compensation before the Commissioner, Employees' Compensation. The appellant contested the application on the ground that the insured vehicle was not involved in the accident and therefore, the appellant was not liable.

4. The Commissioner, Employees' Compensation held that the deceased was employed with respondent no. 6 as a driver at the time of the accident; the accident arose out of and during the course of his employment and the vehicle was validly insured with the appellant. The Commissioner, Employees' Compensation computed the compensation of Rs.6,70,160/- along with the interest @ 12% per annum.

5. Learned counsel for the appellant urged at the time of the hearing that the insured vehicle was stationary at the time of the accident and the deceased was crossing the road when he was hit by the scooter. It is submitted that the insured vehicle was not involved in the accident and therefore, the appellant is not liable to pay the compensation. It is submitted that the appellant issued the policy under the proviso to Section 147 of the Motor Vehicles Act and the appellant can be held liable only if the insured vehicle is directly involved in the accident. Learned counsel for the appellant further submits that the statutory policy under the proviso to Section 147 is different from an ordinary policy under the Employees' Compensation Act and their coverage cannot be equated. Reliance is placed on ***Mamtaj Bi Bapusab Nadaf & Ors. v. United India Insurance Co. & Ors.***, 2010 (2) SCC 536 and ***Malikarjuna G. Hiremath v. The Branch Manager, The Oriental Insurance Co. Ltd. and Anr.***, AIR 2009 SC 2019.

6. Under the proviso to Section 147 of the Motor Vehicles Act, the insurance company has to mandatorily cover the liability arising under the Employees' Compensation Act in respect of death or bodily injury to the driver. The proviso to Section 147 of the Motor Vehicles Act is reproduced hereunder:

> *"Provided that a policy shall not be required—*
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> *(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—*
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> *(a) engaged in driving the vehicle, or*
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> *(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or*
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> *(c) if it is a goods carriage, being carried in the vehicle, or*
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> *(ii) to cover any contractual liability."*
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> *(Emphasis supplied)*

7. This Court is of the prima facie 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 and neither the insurance policy nor Section 147 of the Motor Vehicles Act restricts the liability of the insurance company under the Employees' Compensation Act. In FAO No.35/2012, FAO No.106/2012 and FAO No.379/2014, this Court directed IRDA to re-visit the terms and conditions of the insurance policy and lay down clear guide lines with respect to the liability of the insurance company. This Court remanded back the aforesaid three appeals for considering the stand of the IRDA and passing a fresh

order as to whether the appellant is entitled to recovery rights against the owner of the offending vehicles.

8. Relevant portion of the judgment dated 25th October, 2016 in FAO 379/2014 is reproduced hereunder:-

> *"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.*
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> *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.*
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> *7.The following additional issue is framed for fresh adjudication by the Commissioner, Employee's Compensation:*
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> *(1) Whether the appellant is entitled to recovery rights against respondents no.2 and 3?"*
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> *xxx xxx xxx*
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> *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."*

(Emphasis Supplied)

9. Relevant portion of the judgment dated 30th November, 2016 in FAO 35/2012 and FAO 106/2012 is reproduced hereunder :

> *"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.*
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> *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."*
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> ***(Emphasis Supplied)***

10. In the present case, respondents No. 1 to 5 are entitled to the compensation amount considering that the deceased was employed with respondent No. 6, the accident dated 17th May, 2014 arose out of and during the course of his employment with respondent No. 6 and the vehicle was validly insured with the appellant. The order of the Commissioner, Employees' 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. However, the appellant's claim for recovery rights against respondent no.6 is remanded back to the Commissioner, Employees' Compensation. An additional issue is framed as to whether the appellant is entitled to recovery

rights against respondent No. 6 and the Commissioner, Employees' Compensation shall issue notice to IRDA and pass a fresh order on the additional issue after hearing both the parties as well as IRDA. The appeal is disposed of in above terms.

11. The appellant has deposited the entire award amount with the Commissioner, Employees' Compensation and the said amount has been sent to UCO Bank, Delhi High Court Branch in terms of the order dated 20th February, 2017. The Commissioner, Employees' Compensation has transferred a sum of Rs.8,69,469/- to UCO Bank, Delhi High Court Branch in terms of order dated 20th February, 2017.

12. Respondents no.1 to 4 are present in Court along with the passbooks of their savings bank accounts. The particulars of their savings bank accounts are as under:

(i) **<u>Respondent No. 1 – Smt. Pareshwari</u>** - A/c No. 028801000032177 with Indian Overseas Bank, Model Town, New Delhi, IFSC : IOBA0000288, MICR: 110020005

(ii) **<u>Respondent No. 2 – Sh. Deepak Singh</u>** - A/c No. 378701000000103 with Indian Overseas Bank, Specialised MSME Branch, 3rd Main Road, New Delhi, 110009, IFSC : IOBA0003787

(iii) **<u>Respondent No. 3 – Hemant Singh</u>** - A/c No. 378701000000104 with Indian Overseas Bank, Specialised MSME Branch, 3rd Main Road, New Delhi, 110009, IFSC : IOBA0003787

(iv) **<u>Respondent No. 4 – Yogesh Singh</u>** - A/c No. 378701000000107 with Indian Overseas Bank, Specialised MSME Branch, 3rd Main Road, New Delhi, 110009, IFSC : IOBA0003787

(v) **<u>Respondent No. 5 – Smt. Devaki Devi</u>** - A/c No. 4727000100068852 with Punjab National Bank, Tharali, Distt. Chamoli, Garhwal, Uttarakhand – 246481, IFSC : PUNB0472700, MICR: 246024953

13. UCO Bank, Delhi High Court Branch is directed to disburse the

aforesaid amount to respondents no.1 to 5 in the following manner:

(i) Rs.5 lakh be kept in 100 FDRs of Rs.5,000/- each in the name of respondent no.1 – Pareshwari for the period 1 month to 100 months respectively with cumulative interest.

(ii) Rs.75,000/- be kept in 15 FDRS of Rs.5,000/- each in the name of respondent no.2 – Deepak Singh for the period 1 month to 15 months respectively with cumulative interest.

(iii) Rs.75,000/- be kept in FDR in the name of respondent no.3 – Hemant Singh with cumulative interest till he attains the age of majority. Upon attaining the majority, UCO Bank, Delhi High Court Branch shall release the interest amount to Hemant Singh by transferring the same to his savings bank account mentioned in Para 12 and keep Rs.75,000/- in 15 FDRs of Rs.5,000/- each for the period 1 month to 15 months respectively with cumulative interest in the name of Hemant Singh.

(iv) Rs.75,000/- be kept in FDR in the name of respondent no.4 – Yogesh Singh with cumulative interest till he attains the age of majority. Upon attaining the majority, UCO Bank, Delhi High Court Branch shall release the interest amount to Yogesh Singh by transferring the same to his savings bank account mentioned in Para 12 and keep Rs.75,000/- in 15 FDRs of Rs.5,000/- each for the period 1 month to 15 months respectively with cumulative interest in the name of Yogesh Singh.

(v) Rs.75,000/- be kept in 15 FDRs of Rs.5,000/- each in the name of respondent no.5 – Devaki Devi for the period 1 month to 15 months respectively with cumulative interest.

14. The balance amount, after keeping Rs.8 lakh in FDRs in the aforesaid manner, be released to respondents no.1, 2 and 5 in equal shares.

15. The maturity amounts of the FDRs of respondents no.1 to 5 shall be transferred to their aforesaid individual savings bank accounts.

16. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to respondents no.1, 2 and 5.

17. No cheque book or debit card be issued to respondents no.1, 2 and 5 without permission of this Court. However, in case, the debit card/cheque book have already been issued, the concerned bank shall cancel the debit card and/or cheque book.

18. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

19. The appellant and respondent no.6 shall appear before the Commissioner, Employees' Compensation on 10th August, 2017 when the Commissioner, Employees' Compensation shall issue notice to IRDA.

20. The record of the Commissioner, Employees' Compensation be returned back forthwith. Copy of this judgment be sent to the Commissioner, Employees' Compensation along with the record.

21. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

July 04, 2017/P **J.R. MIDHA, J.**