



\$~4

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

% ***Date of decision: 2nd December, 2024***

+ MAC.APP. 95/2024, CM APPL. 8170/2024, CM APPL.
8172/2024

THE UNITED INDIA INSURANCE CO. LTD.Appellant
Through: Mr. Ravi Sabjharwal, Advocate.

Versus

REKHA & ORS.Respondents
Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (Oral)

1. *An Appeal under Section 173 of Motor Vehicles Act, 1988* has been filed by the *Insurance Company* against the *Impugned Award* dated 23.05.2023 *vide* which the compensation in the sum of Rs.26,03,199/- along with interest @ 7% per annum has been awarded to the Respondent/claimants on account of demise of Shri Sunil in a road accident dated 08.10.2017.

2. The *grounds* on which the impugned Award has been challenged are that:

- i. Rs. 5,00,000/- had been given to the Claimants under Group Personal Accident Scheme, which should have been deducted from the compensation amount; and
- ii. Though the Tractor was insured with the Insurance Company for agricultural purpose, but was being used for



commercial purpose in violation of the Insurance policy.

- iii. That the Trolley attached to tractor, which actually caused the accident, was not insured with the Insurance Company. Therefore, the Insurance Company is entitled to recovery rights against the Driver/Owner.

3. **Submissions heard.**

4. *Briefly stated*, on 08.10.2017 at around 04:00 PM at Khoda Ghazipur Delhi, the deceased Sunil Kumar, aged about 26 years, was going on his motorcycle registration No. DL-10-SR9719. When he reached on the road between Balaji Dharam Kanta and Bhati Jim in front of Khoda, a tractor bearing registration No. UP-87-J-1039, which was being driven by Sh. Rajesh Kumar in a rash and negligent manner at a very high speed, collided with him. The deceased fell on the road and got crushed under the wheel of the Tractor and sustained fatal injuries. He was taken to the hospital where he was declared *Brought Dead*.

5. The *FIR No. 363/2017 u/s. 279/3387 IPC 1806* was registered in P.S. Ghazipur, Delhi and the charge sheet was filed against the Respondent No.6-- Sh. Rajesh Kumar. *Detailed Accident Report* was filed by the IO on 08.12.2017, before the Tribunal.

6. The learned Tribunal granted compensation in the sum of Rs. of Rs.26,03,199/- along with interest @ 7% per annum to the Claimants/ Respondent no.1-5.

7. The *first ground* of challenge is that the Insurance Company is not liable to pay the amount of compensation as the deceased collided with the trolley attached to the tractor from behind. The trolley was not insured with the Insurance Company and the tractor was carrying



“rohri” which shows that it was being used for commercial purpose in violation of the Insurance Policy.

8. Firstly, it is not disputed that the offending Vehicle i.e. the Tractor bearing *Registration no. No. UP 87 J 1039* was duly insured with the Insurance Company and the trolley was admittedly attached to the Offending tractor, which caused the accident. *R1W1- Rajesh*, the Driver, has admitted in his evidence that he was driving the offending tractor, when he was returning from Delhi after purchasing the attached trolley. *Thus, the Learned Tribunal has rightly observed that the Tractor and the trolley would become a single component and the Insurance Company cannot evade liability by alleging that one portion of the offending vehicle was not insured with them.*

9. Much has been argued on the Tractor not being driven in accordance with the terms of the Policy. In this respect, *R2W1/Sh. Satya Pal Singh* deposed that the Driver has violated the term of the Policy which reads as “*Limitations as to use: - The policy covers use only under a permit within the meaning of Motor Vehicles Act 1988 or such a carriage falling under sub-section 3 of Section 66 of the Motor Vehicles Act, 1988. The policy does not cover (1) Use for hire or reward or for racing pace making reliability trial or speed testing (2) Use for Carriage of passengers for hire or reward. (3) Use whilst drawing a greater number of trailers in all than permitted by law*”. However, no evidence was adduced nor any witness was examined to prove that there was a breach of any of the above conditions.

10. Even the averment that the tractor was being used for commercial purposed and was carrying “rohri”, has not been substantiated by any



corroborative evidence. The testimony of *RIWI-Rajesh/Driver* is also silent on any material being carried in the trolley.

11. *Thus, the Tribunal has rightly observed that the Insurance Company has failed to establish that the tractor and trolley attached, was being used for commercial purposes or in breach of the terms of the Insurance Policy.* In light of the above, the Insurance Company is not entitled to recovery rights.

12. *The next ground of challenge* is that the amount of Rs. 5,00,000/- received by the petitioners under Group Personal Accident Policy was liable to be deducted from the compensation amount.

13. Pertinently, there is no documentary evidence to prove that any fixed amount of Rs. 5,00,000/- was granted to the wife/ heirs of the deceased. Even in the cross- examination of the *PWI- Smt. Rekha*, wife of the deceased, only a statement has surfaced without any exact figure of the amount received under the Scheme.

14. Even otherwise, in view of the judgments of in *Helen C. Rebello vs. Maharashtra SRTC* (1999) 1 SCC 90, *Vimal Kanwur vs. Kishore Dan* (2013) 7 SCC 476, *Reliance General Insurance Co. vs. Shashi Sharma* (2016) 9 SCC 627 and *Sebastiani Lakra and others vs. National Insurance Company Limited and another* (2019) 17 SCC 465, it is well settled that the amount received by the heirs by way of Provident Fund, Pension and Insurance cannot be termed as pecuniary advantage liable for deduction.

15. Thus, any amount of compensation granted on account of separate Insurance/Contract, cannot be deducted from the amount of compensation. These amounts are not pecuniary benefits liable to be



deducted. The deceased had taken the Group Personal Accident Policy for which he was paying a separate premium every year during his life-time. It is the amount received by his Legal Heirs after his demise on account of separate Contract. Even though these amounts was received by the dependents after his death but it is *not on account of compensation* for his demise, under the Statute.

16. *The Learned Tribunal has considered all the above judgments and has rightly held that the amount that the deceased received from the Group Personal Accident Policy Scheme, is not liable to be deducted.*

17. There is no merit in the present Appeal, which is hereby dismissed, along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 2, 2024/ va