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

\+ FAO 73/2021, CM APPL. 6908/2021 & CM APPL. 6909/2021

THE NEW INDIA ASSURANCE CO LTD .....Appellant
Through: None.

versus

RAHIM & ANR .....Respondents
Through: Mr. Vikrant Malwal, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% 21.04.2025

1. The hearing is being conducted through hybrid mode.

2. No one appeared for the appellant/Insurance Company when the matter was called.

3. Although, this matter can be dismissed for non-appearance and non-prosecution on behalf of the appellant/Insurance Company.

4. However, even after going through the record of the present case, this Court has no hesitation in finding that the present appeal under Section 30 of the Employee's Compensation Act, 1923 ['**Act**'], assailing the impugned order dated 18.03.2020, insofar as the liability to pay penalty towards the compensation under Section 4A(3)(b) of the Act, which has been imposed upon the appellant/Insurance Company, cannot be sustained in law.

5. Evidently, the respondent No.1/claimant/Rahim was working as a driver of a vehicle bearing No. DL-4CA-G-3620, which met with an accident on 19.05.2015, resulting in grievous injuries to the respondent no.1. There is no dispute with respect to the quantum of compensation

awarded to respondent No.1/claimant on finding that there was relationship of employer and employee between the respondent No.1 and respondent No. 2, the vehicle in question was evidently insured.

6. Further, the learned Commissioner, Employees' Compensation while deciding the issues of imposition of penalty under Section 4A(3)(b) of the Act has taken note of the fact that the extra/additional premium had been charged by the insurance company for legal liability in case of the injuries to driver/conductor and for other employees.

7. It would be pertinent to reproduce the relevant observations passed by the learned Commissioner, Employees' Compensation, which goes as under:-

> "10 (vii) A show cause notice dated 11.04.2018 was issued to respondents to show cause as to why penalty be not imposed against them. Respondent No. 1 has filed his response and has stated that the vehicle was insured and extra premium was charged by the insurance company under the 'head' legal liability of the paid driver. The driver was holding a valid and effective driving license at the time of accident and the insurance company was informed about the accident and injury to the applicant (driver) apart from seeking vehicle damages (O.D. Claim). The insurance company in response to the information of the accident appointed an investigator and the matter was verified including covering the fact that the vehicle was being driven by the applicant at the time of occurrence of accident. After getting the investigation done and verification done, the O.D. claim for damage to the vehicle was paid to them. Given that, it has been reasoned by the said respondent, that he has paid extra premium for driver. He has drawn my attention to the details of the policy wherein in the insurance coverage document filed as RW-1/2 showing the details of the policy bearing No. 35420031140100000796 favouring Sumit Khurana reflects and the extracted relevant portion reads as under:-
> " LL to Employees of insured travelling and/or driving the vehicle = Yes"
> Number of legal Liable Employees = 1"
>
> 10 (viii) The counsel for respondent No. 1 has vehemently argued that given the additional coverage, his case is covered by the one decided case titled as - Oriental Insurance Co. Ltd. Vs. Saroj Singh and ors – FAO No. 51/2014 passed by, the Hon'ble Delhi High Court on 14th February, 2014. Hence insurance can be made liable

> for penalty as well. The insurance had paid the vehicle damage claim but they remained unmoved about the payment to the applicant who has lost his eyes. Given the entirety of the situation, I consider it a fit case for imposition of the penalty and find it just and reasonable to impose penalty at 20°/o of the principal amount."

8. In view of the above, the present appeal is dismissed not only for non-appearance on behalf of the appellant/Insurance Company, but also on merits.

DHARMESH SHARMA, J.

APRIL 21, 2025/sp

Later on, Mr. R.K. Tripathi, learned counsel for the appellant/Insurance Company appeared and was apprised of this Order.

DHARMESH SHARMA, J.

APRIL 21, 2025/sp/sa