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

\+ FAO 147/2021

REKHA CHAUDHARY & ORS. ....Appellants
Through: Mr. Manish Maini and Ms. Anjali Singh, Advs.

versus

NEW INDIA ASSURANCE CO LTD & ORS. .....Respondents
Through: Mr. J.P.N. Shahi, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **21.05.2025**

1. Having heard the learned counsels for the parties and upon perusal of the record, this Court proceeds to decide the present appeal preferred by the appellants under Section 30 of the Employee's Compensation Act, 1923 ["**EC Act**"] assailing the impugned order dated 19.11.2020 and 08.02.2021 seeking compensation on account of death of husband of appellant No.1, arising out of and during the course of employment with respondent No.2 herein, which was allowed and compensation amounting to Rs.7,36,680/- with simple interest @ 12% per annum w.e.f. 13.02.2017 till realization was granted.

2. However, it was directed that the amount of compensation be paid by the respondent No.2 herein i.e. the employer, who shall be at liberty to recover the same from the respondent No.1 herein i.e. the insurer of the motor vehicle, which was being driven by the deceased.

3. The claimants are the widow, two minor children and father of the deceased.

4. It is pertinent to mention here that review was sought by the

appellants/claimants, which was dismissed *vide* order dated 01.02.2021. Further, on issuance of notice under Section 4A(3)(b) of the EC Act, learned Commissioner passed the impugned order dated 08.02.2021, whereby the liability to pay penalty under the aforesaid provision amounting to Rs. 2,57,838/- was also imposed upon the respondent No.2 herein i.e. the employer to be paid to the claimant. Needless to state all the aforementioned orders are assailed insofar as liability to pay the aforesaid compensation has been fastened upon the respondent No.1/insurance company/insurer.

5. **First things first,** there is categorical finding by the learned Commissioner that the deceased Sandeep was employed as driver by the respondent No.2 herein i.e. the registered owner of the vehicle and the finding that the deceased died during the course of and arising out of his employment on 13.02.2017 has not been assailed in any manner. The appellants have also not assailed the quantum of compensation awarded in her favour, which at the cost of repetition is Rs.7,36,680/- carrying simple interest @ 12% per annum w.e.f., date of death of her husband/workman i.e. 13.02.2017.

6. The issue that is raised is that the primary responsibility to pay compensation has been fastened on respondent No.2 herein i.e. the employer despite the fact that the respondent No.1 herein i.e. the insurance company is clearly acknowledging that the vehicle was insured for not only third party risk, but also the fact that an additional premium was paid towards any legal liability under the Workman Compensation Act to the driver. This is clearly substantiated by the policy of insurance placed and proven on the record during the course

of enquiry before the learned Commissioner[1], which was valid from 26.06.2016 to the midnight of 25.06.2017, and it is also evident that an additional premium of Rs. 50/- was paid. Therefore, since respondent No.1 herein i.e. the insurance company is bound by a legally enforceable contract to indemnify the registered owner of the vehicle i.e., the insured, the very purpose of impleading the insurer in claim petition is to avoid multiplicity of proceedings. Once the contract of indemnity is acknowledged, the necessary corollary is to impose the liability to pay compensation upon the insurer, rather than calling upon the registered owner/insured to pay compensation and institute another legal proceedings to recover the same from the insurer company. It is but obvious that recovery of compensation in the manner granted would cause undue delay, thereby compounding the pain, misery and unnecessary hardship to the claimants.

7. While the learned Commissioner cannot be faulted for dismissing the review of the aforesaid order dated 19.11.2020 *vide* order dated 01.02.2021, as he had certainly no power to review the same, the subsequent order dated 08.02.2021 passed under Section 4A(3)(b) of the EC Act, also cannot be sustained for the simple reason that the additional premium had been paid. Consequently, the respondent No.1 /insurance company remains bound to indemnify the respondent No.2/registered owner, i.e., insured of the vehicle, and is, therefore, liable to pay compensation to the claimants.

8. Accordingly, the present appeal is allowed, and the impugned orders dated 19.11.2020 and 08.02.2021 are hereby set aside to the extent that respondent No.2 herein i.e. the employer has been called upon to make payment of compensation to the claimants and recover

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the same respondent No.1/insurance company. To avoid any ambiguity, it is clarified that the respondent No.1/insurance company shall be liable to pay the amount of compensation under Section 4A(3)(b) amounting to Rs. 7,36,680/- with simple interest @ 12% per annum form the date of death, i.e., 13.02.2017 till realization. Furthermore, respondent No.1/insurance company shall also be liable to pay amount of penalty imposed under Section 4A(3)(b) of the EC Act to the claimant. The amount of compensation on both counts shall be deposited with the learned Commissioner within 30 days from today, failing which the claimants shall be entitled to recover the same in accordance with the law. The amount of compensation be disbursed to the appellant No.1/claimant No.1/ widow of the deceased.

9. The present appeal stands disposed.

DHARMESH SHARMA, J.

MAY 21, 2025/Sadiq