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

+ **FAO 350/2019 & CM APPL. 38580/2019**

M/S OKARA ROADWAYS REGDAppellant

Through: **Mr. Mahee Arora & Mr.
Tehzibur Rehman, Advs.**

versus

M/S ORIENTAL INSURANCE CO LTD

& ORSRespondents

Through: **Mr. R K Nain, Ms. Pratima N
Lakra & Mr. Chandan
Prajapati, Advs. for R2 to R5.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **06.05.2025**

1. No one appeared for the respondent no.1/insurance company when the matter was called.
2. Having heard the learned counsel for the appellant and the learned counsel for the respondent no.2 to 5/claimants and on perusal of the record, this Court proceeds to decide the present appeal preferred by the appellant/employer under Section 30 of the Employee's Compensation Act, 1923 ('EC Act') assailing the impugned judgment dated 15.05.2018 passed by the learned Commissioner, Employee's Compensation, North-West District.
3. In a nutshell, it is established from the record that the deceased/Lt. Rahul Kumar S/o Sh. Ram Narayan was employed as a driver on the insured vehicle bearing No.HR-38R-6496 (container HGV) owned by the appellant which met with an accident on 13.12.2016, as a result of which the deceased sustained grievous injuries and eventually succumbed to the same.

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impugned judgment insofar as the penalty under Section 4A(3)(b) of the EC Act has been imposed upon the appellant to the extent of ₹4,30,560/-.

5. Learned counsel for the appellant/owner has alluded to the policy of insurance issued by the respondent no.1/insurance company for the period 24.12.2015 to 23.12.2016 (Annexure A-10). Evidently, apart from the basic third party premium towards insurance, an additional premium of ₹150/- was paid towards legal liability (LL) to the employees. It is thus urged that the insurance company is also liable to pay the penalty amount.

6. Learned Counsel for the appellant has invited the attention of this Court to an earlier decision passed by this Court on a similar issue raised in FAO 76/2022 titled **The Oriental Ins. Co. Ltd. v. Smt. Kamla Devi** dated 25.03.2025 whereby it was held as under:-

“6. In the present appeal, which was admitted for hearing on 24.03.2022, the only issue that was canvassed for consideration was whether the appellant/insurance company can be held liable to pay the penalty amount under Section 4 A (3) of the Act.

7. The aforesaid position in law was examined by the Supreme Court in the case of **Ved Prakash Garg v. Premi Devi**¹, wherein although it was held that the liability to pay a penalty under Section 4(A)(3)(b) of the Act cannot be fastened upon the insurance company, however, in the aforesaid judgment, a decision by the Rajasthan High Court was discussed titled as **United India Insurance Company Ltd. v. Roop Kanwar And Ors.**², wherein it was held that if an additional premium has been paid by the employer/insurer to cover compensation under the Workmen's Compensation Act, 1923 the liability to pay the penalty under Section 4(A)(3)(b) of the Act shall also be borne by the insurer.

8. In the present case, the insurance policy on the record *ex facie* shows that apart from the basic third-party insurance totalling Rs. 14,974/-; an additional premium was paid by the owner/employer i.e. Rs.100/-besides the legal liability (LL) to employees @ Rs. 150/-. Since an additional premium was paid by the



employer/respondent No.4, the impugned judgment dated 29.11.2021, insofar as it imposes the liability for payment of compensation towards the penalty under Section 4(A)(3)(b) of the Act, upon the shoulders of the appellant/ Insurance Company cannot be interfered with.”

7. In light of the said proposition of law, which has been adopted by this Court in several cases, and at the cost of repetition, reiterating the law applicable that in a case where additional premium has been paid by the employer to the insurance company, the financial liability in respect of the penalty imposed under Section 4(A)(3)(b) of the EC Act shall also be borne by the insurance company.

8. In view of the above, the present appeal is allowed. The impugned order dated 15.05.2018 passed by the learned Commissioner, Employee's Compensation is hereby modified to the effect that the penalty under Section 4A(3)(b) to the extent of ₹4,30,560/ shall also be payable by the respondent no.1/insurance company.

9. Since the learned counsel for respondent no.2 to 5/claimants submits that the entire amount of compensation including penalty has been released to the claimants, it is directed that the respondent no.1/insurance company shall reimburse the entire amount of penalty to the appellant within eight weeks from today, failing which it shall be liable to pay the said amount with interest at the rate of 6% per annum to the appellant from the date of this order till realization.

10. The present appeal stands disposed of accordingly. Pending applications also stand disposed of.

DHARMESH SHARMA, J.

MAY 06, 2025

Ch/Es

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