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

% **Date of decision: 25th March, 2025**

+ **FAO 76/2022 and CM APPL. 14536/2022**

THE ORIENTAL INS. CO. LTD.Appellant

Through: None.

versus

SMT. KAMLA DEVI & ORS.Respondents

**Through: Mr. R.K. Nain, Mr. Chandan
Prajapati and Mr. Daksh Nain,
Adv. for R-1 to R-3
Mr. Mahee Arora and Mr.
Tehzibur Rehman, Adv. for R-
4.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. No one appeared on behalf of the appellant/Insurance Company when the matter was called.
2. Having heard the learned counsel for respondents No. 1 to 3, who are claimants as well as learned counsel for the respondent No.4 and on perusal of the record, this Court proceeds to decide the present appeal.
3. In a nutshell, the deceased Ramesh Singh, s/o Sh. Rattan Singh, was evidently employed as a driver by respondent No.4 on a truck bearing No. PB-10-BV-4954, which met with an accident on 02.06.2014, arising out of and during the course of his employment, when the truck collided with another vehicle, resulting in the truck catching fire and he was burnt alive in the mishappening.



4. Learned Commissioner, Employees' Compensation allowed the claim for compensation filed on behalf of the respondents No.1 to 3/claimants and assessed the compensation to the tune of Rs. 7,88,240/-, besides making them entitled to claim interest as per Section 4 A of the Employees' Compensation Act, 1923¹ @ 12% p.a. from 30 days after the accident till its realization.

5. Further, considering the delay on the part of respondent No.4 in making the interim compensation to the family of the deceased driver, a penalty of Rs. 1,97,060/- was imposed upon respondent No.4. Since the ill-fated truck was covered under an insurance policy for the period from 14.09.2013 to 13.09.2014, the entire liability to pay compensation, including the penalty, was fastened upon the appellant/insurance company.

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**², 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.**³, wherein it was held that if an additional premium has been paid by the employer/insurer to cover compensation under the Workmen's

¹ Act

² 1997(8)SCC 1

³ 2006(2) TAC 973



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.

9. Accordingly, the present appeal is dismissed.

10. At this stage, learned counsel for the respondents No. 1 to 3 submits that the amount of compensation, except for the penalty portion, has already been released to the claimants. The appellant/insurance company is directed to deposit the entire amount of penalty with interest @ 12% p.a. from the date of the impugned judgment until the deposit is made with the learned Commissioner, Employees' Compensation.

DHARMESH SHARMA, J.

MARCH 25, 2025/SP/ss