146907 - It is not permissible to waive the diyah if the slain person was in debt

the question

I have two question regarding same subject.But first I will tell you brief background.
Last week I lost my brother in a road accident, because of his death we got liability of 5 lakh loan (education loan which got from bank for his studies).
My question is that:
1. Can we ask compensation with the opposite person who hit my brother and caused to death.? (As heard from the eye witnesses defaulter was the opposite person)
2. Can we utilize the insurance claim money from the insurance company in sadaqah-e- jariah of my brother and in further my sisters marriage.

Detailed answer

Praise be to Allah.

Firstly:

If a person strikes another and causes his death unintentionally, he must do two things: pay the diyah and offer expiation, because Allah says (interpretation of the meaning):

“It is not for a believer to kill a believer except (that it be) by mistake; and whosoever kills a believer by mistake, (it is ordained that) he must set free a believing slave and a compensation (blood money, i.e. Diya) be given to the deceased’s family unless they remit it”

[al-Nisa’ 4:92].

The diyah is one hundred camels, which is equivalent to approximately one hundred thousand (100,000) riyals.

The expiation is fasting for two consecutive months.

The diyah for accidental killing is to be paid by the killer's male relatives on his father's side. If he has no male relatives on his father's side, or they refuse to pay, then the killer must pay it.

The victim's next-of-kin have the right to waive the diyah, if they are adults and of sound mind, unless the victim was in debt, in which case they do not have the right to waive it, rather they should take the diyah and pay off the deceased's debt from it first, then divide the rest among his heirs.

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) was asked: Do the heirs of the victim have the right to waive the diyah when the victim owes a debt?

He replied: They do not have the right to waive it, because the rights of the heirs of the victim cannot be waived until after the debt has been paid, because Allah says in the verse of inheritance (interpretation of the meaning):

"after payment of legacies he (or she) may have bequeathed or debts"

[al-Nisa' 4:12].

So they have no right to waive the diyah, because the diyah is to be added to the estate. If we assume that he was killed and he had fifty thousand, and the diyah is one hundred thousand, then his wealth is one hundred and fifty thousand.

End quote from Liqa' al-Baab al-Maftooh (123/22).

Secondly:

If the insurance company pays the diyah or compensation on behalf of the killer, there is nothing wrong with you taking that from the company, and after paying off your brother's debts there is nothing wrong with you donating the rest as an ongoing charity on his behalf or helping to arrange your sister's marriage. This diyah is to be added to the estate of the deceased and shared out among his heirs after paying off his debt, as stated above, and his heirs have the right to donate their shares if they wish.

For more information please see the answer to questions no. 70318 and 52809.

And Allah knows best.