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

Date of Decision: 28.04.2016

+ **MAC.APP. 111/2013**

NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Mr. J.P.N. Shahi, Advocate

versus

DEVI SINGH & ORS.

..... Respondents

Through: Mr.B.P. Saxena, Advocate for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The Motor Accident Claims Tribunal (Tribunal) had decided the accident claim case (MAC petition 232/2010) instituted on 03.07.2006 by the first and second respondents (claimants), by judgment dated 09.10.2012 returning a finding that the motor vehicular accident in which Raju, the son of the claimants died on 18.12.2005 had involved negligent driving of a truck bearing registration no.UP 25 7150 (truck), insured against third party risk with the appellant insurance company and on that basis directed it to pay the compensation awarded.

2. The insurance company, by the appeal at hand, raises the issue concerning the above-said finding contending that no evidence was adduced

to show the involvement of the truck, leave alone negligence on the part of its driver. The impugned judgment shows the tribunal referred to the judgment of the learned single judge of this court in *National Assurance Co. Ltd. Vs. Smt. Pushpa Rana and Others*, MAC Appeal no.360/2007, decided on 20.12.2007 and recorded conclusions as to the involvement and negligence only on the basis of a copy of the first information report (FIR), which had been registered by the police about the accident in question and the documents connected therewith. Copies of the record of the said case show that the eye witnesses to the accident are available. Yet, no evidence was called in to substantiate the averments made in the FIR.

3. While dealing with another appeal raising identical issues in *New India Assurance Co. Ltd. Vs. Devki & Ors.*, MAC appeal no.165/2013, decided on 29.02.2016, this court after referring to the judgments of the Supreme Court in *Bimla Devi Vs. Himachal Road Transport Corporation*, 2009 ACJ 1725 (SC) and *Minu B Mehta Vs. Balkrishna Ramchanra Nayan*, (1977) 2 SCC 441 held as under :-

“..8. ..In the facts and circumstances, this Court finds it difficult to follow the view taken in Pushpa Rana (supra). Since the law declared by the Supreme Court in Meena Variyal (supra) is binding, there is no escape from the conclusion that it is the burden of the claimants in a petition under section 166 of MV Act to prove negligence. Should they find it difficult to prove evidence with regard to negligence, the option to have resort to no-fault liability on the structured formula under Section 163A of MV Act is always available to seek just compensation. The case of Bimla Devi (supra) cannot be an illustration to hold otherwise inasmuch as it is clear from the narration of facts noted therein that an eye witness was available and the

conclusion on facts had been reached on the basis of his testimony...”

4. The learned counsel for the claimants fairly conceded that the finding about involvement and negligence of the truck could not have been returned without proper evidence being adduced, and agrees that the judgment may be set aside but requests that he be given an opportunity to examine the eye witnesses before the Tribunal.

5. In the facts and circumstances of the case, the prayer of both sides are granted. The impugned judgment dated 09.10.2012 is set aside. The matter is remitted to the Tribunal for further inquiry during the course of which the claimants shall be allowed an opportunity to adduce further evidence. Needless to add, the parties which contest shall be entitled to cross-examine the witnesses additionally examined and also adduce evidence in rebuttal, if any. The Tribunal shall, thereafter, proceed expeditiously and decide the claim afresh being influenced by the view taken earlier.

6. By order dated 06.02.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch, within the period prescribed and upon such deposit being made, 50% was allowed to be released to the claimants in terms of the impugned judgment. The balance was directed to be kept by the bank in the fixed deposit receipt in the name of the first claimant Devi Singh, with copy to be handed over to the claimant. Since the matter has been remitted, for further inquiry, it is directed that the amount already released to the claimant shall be subject to final decision to be taken by the tribunal in terms of the above directions. The balance retained in the fixed

deposit receipt shall be transferred by UCO Bank, Delhi High Court branch, New Delhi to a nationalized bank of the choice of the tribunal which shall retain it for it being availed for satisfaction of the award that is passed in the fresh judgment to be rendered. If any excess is found to be in deposit, the same shall be refunded at an appropriate stage.

7. The parties are directed to appear before the tribunal for further proceedings on 30.05.2016.

8. The statutory deposit shall be refunded.

9. The appeal is disposed of, in the aforesaid terms.

APRIL 28, 2016

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**R.K. GAUBA
(JUDGE)**

