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

Date of Decision: 09.05.2016

\+ MAC.APP. 172/2013

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through:

versus

SUNITA SINGH AND ORS ..... Respondents

Through

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Accident claim case (suit no.332/10) decided by the Motor Accident Claims Tribunal (tribunal) by judgment dated 31.10.2012, concerned the death of Anupam Kumar Singh in a motor vehicular accident that occurred on 24.09.2010. In the claim petition, preferred by first to fourth respondents (collectively, claimants) it was alleged that the accident had occurred since the motor cycle bearing registration no.DL-6ST-9807 (motor cycle) on which the deceased was travelling was hit by a bus bearing registration no.DL-1PB-3806 (bus) in a negligent manner.

2. The tribunal has returned a finding upholding the case that the death had occurred due to involvement of the bus and the negligent driving thereof by its driver, primarily on the statement of the first claimant (first respondent) who appeared as a witness (PW-1) tendering her affidavit (PW1/1) and a copy of the record of investigation relating to the first information report (FIR) no.308/2010 of PS R.K. Puram.

3. The insurance company which has been fastened with the liability to pay the compensation awarded by the tribunal by the judgment dated 31.10.2012, raises the prime issue of there being no evidence adduced about the involvement of the bus and negligence on the part of its driver. It may also be added that the insurer further questions the computation of compensation as well.

4. PW-1, the solitary witness examined with regard to the involvement of the bus and negligence was admittedly not an eye witness. On being asked, the counsel for the claimants submitted that he may now be given an opportunity to prove the necessary facts by proper evidence, in as much as the eye witness was available, he being the person travelling on the motorcycle with the deceased at the same point of time.

5. With this submission, the counsel fairly concedes that the impugned judgment may be set aside and the matter remitted to the tribunal.

6. In the above facts and circumstances, the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry in accordance with law. In the further inquiry, the claimants shall be entitled to lead further evidence. Needless to add, the parties which contest will be

entitled to cross-examine the witnesses to be further examined by the claimants and also lead evidence in rebuttal. After giving such opportunity, the tribunal shall pass a fresh judgment with an open mind without feeling bound by the view taken earlier. The parties shall appear before the tribunal on 07.06.2016.

7. By order dated 22.02.2013, the insurance company had been directed to deposit the entire awarded with upto date interest with the UCO Bank, Delhi High Court Branch, from which 50% was allowed to be released, the balance kept in fixed deposit receipt. The amount held in fixed deposit receipt shall presently be refunded to the insurance company with statutory deposit, if made. The amount already received by the claimants shall be subject to adjustment against the award that may be passed by the tribunal in the remitted inquiry, should the case of the claimants about involvement of the bus and negligence on the part of its driver be upheld. Conversely, if the tribunal holds otherwise, it shall issue necessary directions about such amounts paid to the claimants.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 09, 2016
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