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

Date of Decision: 22nd February, 2016

\+ MAC.APP. 269/2012 & CM APPL. 4754/2012

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD ..... Appellant

Through: Ms Neerja Sachdeva with Ms Pooja Tandon, Advs.

versus

SMT GEETA & ORS ..... Respondents

Through: Mr. B.S. Solanki, Adv. for R-1 to 5.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appeal at hand has been presented by the Insurance Company (third respondent before the Tribunal) challenging the interim award passed on 13.12.2011 allowing the prayer of the claimants (first to fourth respondents herein) under Section 140 of Motor Vehicles Act, 1988 (M.V. Act) directing compensation in the sum of Rs. 50,000/- being paid on the principle of no fault liability on account of death of Ajit Singh as a result of motor vehicular accident that occurred on 13.12.2006, involving Tractor bearing no.HR-10H-7894 (the offending vehicle) which concededly was insured against third party risk with the appellant Insurance Company for the period in question.

2. The Insurance Company (appellant), upon being noticed by the Tribunal on the main claim petition presented under Section 166 of Motor Vehicles Act, 1988, filed written statement on 27.08.2010 raising the preliminary objection that it had issued farmer’s package policy wherein the offending vehicle should have been used for agricultural purposes only. It

contended that the vehicle was not being used for agricultural purposes and therefore, it could not be called upon to indemnify. It is the contention of the claimants that the deceased was driving as a labourer engaged by the owner of the offending vehicle and was on way to the agricultural fields when the accident occurred and the tractor fell into a drain resulting in the death of the driver, the claimants cannot be denied the benefit of the insurance cover. The appellant relies upon *Yallwwa (Smt.) and Others v. National Insurance Co. Ltd. and Another (2007) 6 SCC 657.*

3. Having heard the learned counsel for the appellant, this Court finds that the issue cannot be resolved at the stage of preliminary award as it would need to be put to inquiry on the main petition based on fault –liability clause wherein the Insurance Company will be liable to prove the grounds on which it seeks to be absolved of the duty to indemnify.

4. The appeal is found unmerited and liable to be dismissed.

5. The Insurance Company had deposited the amount as per interim award with up to date interest in terms of order dated 16.02.2012. The said amount shall be released by the Registrar General to the claimants in terms of interim award passed by the Tribunal. Should the Insurance Company succeed before the Tribunal on the main petition and is absolved of its liability to indemnify, it shall be granted recovery right against the owner of the offending vehicle.

6. Statuary amount, if deposited, shall be released.

7. The appeal is disposed of accordingly in above terms.

R.K.GAUBA, J

FEBRUARY 22, 2016/afa