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

Date of Decision: 25.05.2016

\+ MAC.APP. 14/2013

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

Through: Mr. Rajat Brar, Advocate

versus

POOJA DEVI & ORS. ..... Respondents

Through: Mr. Pankaj Sinha, Adv. for R-1 to 4

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ravish Kumar died as a result of the injuries suffered in a motor vehicular accident that occurred at about 6.30 p.m. on 06.02.2009 at Palla More near Sardar Ka Hotel, GT Karnal Road, Alipur, Delhi involving negligent driving of a truck bearing registration no.JK-13A-5349 (offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer). His dependent family members (first to fourth respondents (claimants) instituted an accident claim case (MACT 476/2009), on 08.06.2009, seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act) impleading, besides the owner and

driver, the appellant company (insurer), it having admittedly issued an insurance policy covering third party risk for the period in question.

2. After inquiry, the tribunal, by judgment dated 10.09.2012, upheld the case of the claimants about death having occurred due to negligent driving of the offending vehicle. It awarded compensation in the sum of Rs.42,07,660/- and directed the insurance company to pay with interest at the rate of 9% pa. from the date of filing of the petition till realization.

3. The insurance company is in appeal questioning the computation of compensation pressing home only one argument, viz. that the award under the non-pecuniary heads of damages is unduly high. It is noted that the tribunal followed the view taken in (2009) 11 ACC 625 and (2012) VI AD (SC) 399. In these circumstances, there is no case for interference with the computation of compensation.

4. The only other contention pressed at the hearing by the insurer is that the driving licence of the sixth respondent (driver) had expired on 23.10.2008. A copy of the said driving licence has been submitted (at page 30-33 of the paper book). The said driving licence shows that the sixth respondent had been authorised by the licencing authority since 24.10.2003. It does appear that the validity of the driving licence had expired before the accident. An endorsement (at page 33 of the paper book), however, further shows that the licence had been renewed with effect from 11.08.2009. In this fact-situation, the plea of the insurance company about breach of terms and conditions of the insurance company cannot be accepted. Merely because the licence had become invalidated for a certain period does not mean the absence of a driving licence had contributed to the cause for

accident for it to be treated as a fundamental breach resulting in insurer being held entitled to avoid its liability to indemnify. [see *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297]. Thus, the appeal being devoid of substance is dismissed.

5. By order dated 07.01.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest which was ordered to be kept in fixed deposit receipt in the name of the first claimant. By order dated 05.04.2013, 70% of the said deposited amount was allowed to be released. The Registrar General shall now take steps to ensure that the balance held in fixed deposit is also released to the claimants in terms of the impugned judgment.

6. The statutory deposit, if made, shall be refunded.

7. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 25, 2016
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