$~R-441

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

***Decided on: 09th November, 2017***

\+ MAC APPEAL 32/2012

THE ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. A.K. Soni, Advocate

versus

BASHIR AHMAD KHAN & ORS. ..... Respondents
Through: None

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

**JUDGMENT (ORAL)**

1. By judgment dated 15.10.2011 in accident claim case (suit no.72/11) of first and second respondents (collectively, the claimants), the Motor Accident Claims Tribunal (Tribunal) returned a finding that Amir Khan, son of the claimants had died in a motor vehicular accident that was caused due to the negligent driving of Tempo bearing registration no.HR-55A-8387 by the third respondent. The said vehicle was registered in the name of the fourth respondent and admittedly insured against third party risk with the appellant (insurer).

2. The tribunal has determined the compensation fastening the liability on the appellant (insurer) to pay the same with interest in terms of its responsibility under the insurance policy.

3. At the hearing on the appeal, the only point pressed is that the issue of negligence was not properly determined as there was no eye-

witness account. The plea must be rejected as it is not an unexceptional requirement of the law that the eye-witness must be produced. The tribunal, it is noted, has gone by the principle of *res ipsa loquitur* and on that basis returned the finding of negligence. Such findings do not call for any interference particularly for the reason that there was no effort made to examine the tempo driver to prove any facts to the contrary.

4. The appeal is dismissed.

5. By order dated 09.01.2012, the insurance company had been directed to deposit seventy five (75%) of the awarded amount with proportionate interest with the Registrar General. By subsequent order dated 12.09.2013, sixty percent (60%) of the deposited amount was permitted to be released with proportionate interest. The Registry shall release the balance lying in deposit with accrued interest to the claimants. The insurer shall be obliged to satisfy the award in entirety by making requisite deposit of the balance with the tribunal within 30 days.

6. The statutory amount shall be refunded.



**R.K.GAUBA, J.**

**NOVEMBER 09, 2017**

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