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

Decided on: 09th August, 2017

\+ MAC.APP. 95/2017 and CM No.3172/2017 and 17932/2017

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. Priyadarsi Acharya, Advocate

versus

MASTER ROHAN & ORS ..... Respondents
Through: Mr. Anil Tomar, Adv. for R-1
Mr. Uma Shankar Sharma and Mr. Amit Sharma, Advocates for R-2 & 3

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

JUDGMENT (ORAL)

1. The first respondent, then aged 11 years, has suffered injuries in a motor vehicular accident that occurred on 20.12.2010, statedly due to negligent driving of a motor vehicle bearing registration no.DL-1LG-4979. An accident claim case (MACT 109/11, new no.15413/2015) was filed for compensation on his behalf in which the appellant was impleaded as third respondent, it being the insurer against third party risk of the offending vehicle, the other respondents being the driver and owner, now second and third respondents in appeal.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry, and, by judgment dated 22.12.2016, upheld the case on the principle of fault liability and awarded compensation in the sum of

Rs.8,67,350/- with interest at the rate of 9% p.a. directing the appellant to pay rejecting its contentions about the breach of the terms and conditions of the insurance policy, this based on the evidence to the effect that the driving licence held by the second respondent herein was fake.

3. The insurer has come up in appeal questioning the computation of compensation on the ground the assessment of functional disability to the extent of 65% was unfounded. It also raises questions about the non-pecuniary heads of damages that have been awarded, reiterating the plea about the breach of the terms and conditions of the insurance policy.

4. After some hearing, the learned counsel for the first respondent fairly conceded that better evidence about the nature and extent of disability required to be adduced. He thus conceded that the appeal of the insurance company may be allowed but prayed that the matter may be remitted for further inquiry so that the claimant can adduce further evidence. The counsel for the insurance company and the other respondents submit no objection.

5. In view of the above, the appeal is allowed. The impugned judgment is set aside. The matter is remanded to the tribunal for further inquiry in which the claimants will be given opportunity to lead additional evidence particularly on the question of disability, its nature and extent. Needless to add, opportunity will also be given to the contesting respondents to lead evidence in rebuttal, if any.

6. The contentions of all the parties are kept open to be reconsidered by the tribunal in the fresh judgment.

7. The amount deposited by the insurance company in terms of the order dated 25.01.2017 and the statutory deposit shall be presently refunded.

8. The parties shall assemble before the tribunal for further proceedings in accordance with law on 08.09.2017.

9. The appeal and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 09, 2017
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