$~R-458

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 10th November, 2017

\+ MAC.APP. 171/2012

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

BALA DEVI & ORS ..... Respondents

Through: Mr. B.R. Sharma, Adv. for R-1 & 2.

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

JUDGMENT (ORAL)

1. The judgment impugned by the insurer here was passed by the tribunal on 20.12.2011 in accident claim case (case no. 584/2011) instituted at the instance of first and second respondents (collectively, the claimants) alleging that their son Sonu Lakra had died in motor vehicular accident that occurred on 21.05.2011 when the motorcycle bearing registration no. DL 4S BH 8801 which he was riding, was by hit at 05.30 p.m. by jeep bearing registration no. HR 05G 6712 driven in a rash manner by the first respondent. The case was contested by all the three respondents in the array before the tribunal including the insurer besides third and fourth respondents in appeal. The tribunal returned a finding accepting the case that the death had occurred due to negligent driving of the jeep merely on the basis of perusal of the

FIR and some documents relating to the investigation carried out. No formal evidence about the sequence of events leading to the occurrence was adduced from which the conclusion about negligence could be deduced.

2. The learned counsel for the claimant at the hearing fairly conceded that since eye witness was available and the case was not necessarily dependent on *res ipsa loquitur,* the matter required further inquiry. Thus, while conceding to the prayer of the appellant for the appeal to be allowed and the impugned judgment to be set aside, he submitted that the claimants may be given fresh opportunity to prove negligence.

3. The appeal is allowed. The impugned judgment is set aside. The claim case is restored on the file of the tribunal remanding it for further inquiry. The parties are directed to appear before the tribunal in accordance with law on 11th December, 2017.

4. By order dated 17.02.2012, the insurer had been directed to deposit the entire awarded amount with the Registrar Gneral. By subsequent order dated 23.05.2012, 50% of the said amount was permitted to be released to the claimants. The amount already received by the claimants will be subject to adjustment, or appropriate further directions to be made by the tribunal, in the light of fresh adjudication, particularly on the issue of negligence. The balance lying in deposit shall be refunded, with statutory amount, by the registry to the insurance company.

R.K.GAUBA, J.

NOVEMBER 10, 2017/nk