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

Decided on: 6th July, 2017

\+ MAC.APP. 218/2016

MANOJ KUMAR & ANR ..... Appellants

Through: Mr. Vinod Kumar Singh, Advocate

versus

SHRI RAM GENERAL INSURANCE CO LTD AND ANR ..... Respondents

Through: Mr. Priyadarsi Acharya, Advocate for R-1.

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

JUDGMENT (ORAL)

1. While granting compensation in favour of second respondent herein on his claim petition (MAC No. 279/2010), the motor accident claims Tribunal, by the impugned judgment dated 6.11.2015, directed the first respondent (insurer) of the offending vehicle, tractor bearing No. UP 13H 8131 to pay, but also granted recovery rights to it as against the appellants, they being the driver and owner respectively of the offending vehicle, primarily on the ground that there was breach of condition of the insurance policy in that the tractor was registered and permitted to be used for agricultural and forestry purposes only.

2. It appears prior to the accident, the tractor was taken with a trolley attached with for transporting *badarpur* (building material) to

the place of occurrence which, in the opinion of the tribunal and the submission of the insurer, indicated commercial use. But the crucial fact in the assessment of this Court is that at the time of the accident, the tractor was not being used for any such purposes. The cargo, if any, had already been offloaded. It was after the delivery of the cargo, whatever be its nature, when the tractor was moving that the accident occurred due to negligence on the part of its driver. Since the previous use would have no co-relation, the recovery rights cannot be upheld.

3. The observation in the impugned judgment to the above effect are set aside. The amount, if deposited by the appellant in terms of the impugned judgment and interim order shall be refunded with statutory deposit.

4. The insurance company is called upon to satisfy the award forthwith.

R.K.GAUBA, J.

JULY 06, 2017
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