$~R-493

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

Decided on: 15th November, 2017

\+ MAC APPEAL No. 431/2012 & CM No.7223/2012

THE NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant
Through: Mr. P.K. Seth, Adv.

versus

POONAM & ORS. ..... Respondents
Through: Mr. Anshuman Bal, Adv. for R-1 to R-5

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

JUDGMENT (ORAL)

1. On the accident claim (Case No.59/11) instituted by the first to fifth respondents (the claimants) on 24.12.2005 seeking compensation under the structured formula as per Section 163A of Motor Vehicles Act, 1988, on the principle of no fault liability for the death of Smt. Kanti (a house wife) in a motor vehicular accident which occurred on 03.11.2005, involving motor vehicle described as DH-38-J-1968, the tribunal has awarded compensation in the total sum of Rs.6,10,000/-, fastening the liability on the appellant, it admittedly having issued an insurance policy covering third party risk, in respect of such vehicle for the period in question.

2. The insurer questions the method of calculation adopted by the tribunal submitting that the tribunal has applied a mixture of law including the rulings in respect of cases under Section 166 of Motor Vehicles Act, 1988. The counsel for the claimants, after some arguments, fairly conceded that the matter requires re-adjudication by the tribunal, following the correct method of calculation in cases under Section 163A of the Motor Vehicle Act, 1988. He requested that the matter may be remanded to the tribunal.

3. In the foregoing facts and circumstances, the impugned judgment is set aside. The claim case of the respondents is remanded to the tribunal for fresh adjudication. For such purpose, the parties are directed to appear before the tribunal on 15.12.2017.

4. By order dated 23.04.2012, the insurance company had been directed to deposit the entire awarded amount with the Registrar General. By order dated 08.02.2013, 70% of such amount was directed to be released to the claimants. The balance lying in deposit shall be presently refunded with statutory deposit to the insurance company. The amount already received by the claimants shall be liable to be adjusted against the award as determined by the tribunal by fresh adjudication.

5. The appeal is disposed of in above terms.

R.K.GAUBA, J

NOVEMBER 15, 2017
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