

\$~R-369

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

Decided on: 27th October, 2017

+ **MAC APPEAL No. 601/2011 & CM No. 12121/2011 (stay)**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Priyadarsi Acharya, Adv.

versus

PHOOLJEET SHARMA & ORS. Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The insurance company seeks to assail the judgment dated 14.02.2011 of the motor accident claims tribunal in accident claim (suit no. 756/2008) of the first respondent instituted on 07.12.1999 on the ground that no proof was adduced of involvement of the insured vehicle it being described as bus bearing registration no. DL 1P 6641 or negligence on the part of its driver (second respondent) and, therefore, the award under Section 166 of the Motor Vehicles Act, 1988 on account of death of A.S. Sharma in the motor vehicular accident that occurred on 05.10.1999 is erroneous.

2. On perusal of the record, it is found that the tribunal has gone by the principal of *res ipsa loquitur* having relied *inter alia*, on the evidence adduced through Head Constable Ashok Kumar (PW-1). In

these circumstances, the plea of the insurance company does not deserve to be accepted.

3. The appeal is dismissed.

4. By order dated 07.07.2011, the insurance company had been directed to deposit the entire awarded amount with interest with Registrar General, the same to be kept in fixed deposit receipt. By order dated 31.10.2013, 60% of the said amount was permitted to be released to the claimant. The registry shall now release the balance to the claimant in terms of the impugned judgment.

5. The statutory amount shall be refunded.

R.K.GAUBA, J.

OCTOBER 27, 2017

nk