

\$~R-511

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

Decided on: 20th November, 2017

+ **MAC APPEAL 584/2012**

NARESH KUMAR

.... Appellant

Through: Mr. Navneet Goyal, Advocate

versus

**BAJAJ ALLIANZ GENERAL INSURANCE
CO. LTD. & ORS.**

..... Respondents

Through: Mr. A.K. Soni, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The Motor Accident Claims Tribunal (Tribunal) while deciding the accident claim case (MACT no.852/2010) of the second respondent (claimant), by judgment dated 29.01.2011, directed the first respondent, insurer of the offending vehicle, it being a blue line bus bearing registration no.DL-1PB-1243, to pay the same initially but granted it recovery rights against the appellant, he concededly being the registered owner of the bus, *inter alia*, on the grounds that the third respondent (driver) was not holding a valid authorization and the bus being not covered by a permit for the place of accident.

2. It appears the proceedings leading to the judgment dated 29.01.2011 before the tribunal were *ex-parte* against the appellant. He had later moved an application under Order IX Rule 13 of the Code of

Civil Procedure, 1908 (CPC) praying for the said *ex-parte* judgment to be set aside on the ground that he had not been properly served. The tribunal dismissed the said application and the applications filed therewith by order dated 19.03.2012.

3. The appeal at hand challenges both the judgment dated 29.01.2011 and the order dated 19.03.2012. The contention of the appellant is that he was not properly served. This is sought to be demonstrated by the fact that the notice was tendered to and purportedly received by one Narender Kumar. The appellant also submits that he had a valid defence on the issue of the driving licence and permit and, thus, submits that he would not press for the award of compensation in favour of the claimant to be set aside but only prays for a limited inquiry on the defence affecting the recovery rights.

4. Having regard to the facts and circumstances, the prayer is granted. The issue of the breach of terms and conditions of the insurance policy is remitted to the tribunal for further inquiry. In such further inquiry, it shall be the burden of proof of the appellant (owner of the vehicle) to prove that the driver had a valid authorization to drive the vehicle on the date, time and place when the accident occurred and that, for such purposes, the bus was also covered by a valid permit. The parties i.e. the appellant (owner) and the first respondent (insurer) shall appear before the tribunal on 21.12.2017 for further proceedings in accordance with law.

5. By order dated 25.05.2012, the enforcement of the recovery rights against the appellant was stayed subject to deposit of an amount of Rs.1,00,000/- in the name of the Registrar General within the period

specified which was treated as additional amount over and above the amount of Rs.1,00,000/- which had statedly been deposited earlier by the appellant with the Metropolitan Magistrate and adjusted towards payment of compensation to the claimant. The tribunal after rendering a fresh decision on the issue of recovery rights, shall also pass necessary directions with regard to the payment(s) earlier made through the court of the Metropolitan Magistrate as well as the amount deposited with the Registrar General.

6. The amount deposited with the Registrar General with accrued interest, if any, shall be made over to the tribunal by the registry, to be retained by the tribunal in an interest bearing fixed deposit receipt taken out from a nationalized bank initially for a period of six months with provision for auto renewal.

7. The statutory amount, if deposited, shall be presently refunded to the appellant.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 20, 2017

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