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

Decided on: 25th October, 2017

\+ MAC APPEAL 551/2011 and CM 11328/2011 and 13095/2011

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. Priyardarsi Acharya, Advocate

versus

REKHA SHARMA & ORS. ..... Respondents
Through:

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

JUDGMENT (ORAL)

1. The liability to pay the compensation on account of the death of Yogesh Sharma in a motor vehicular accident that took place on 23.01.2008 has been fastened against the appellant / insurance company on the claim petition (suit no.125/2009) instituted on 09.03.2009 by the first, second and fifth respondents (collectively, the claimants) on the basis of the finding returned, by the judgment dated 09.09.2010, that the death had occurred due to the negligent driving of a truck bearing registration no.GJ-18X-8380 by the third respondent, it being a vehicle registered in the name of the fourth respondent and insured against third party risk with the appellant.

2. The insurer, by the appeal at hand, questions the award on the ground that the proof of negligence was not properly adduced.

3. It is noted that the third and fourth respondents inspite of notice have chosen to suffer the proceedings *ex parte*. The finding on involvement of the vehicle and negligence on the part of its driver has been returned by the tribunal applying the principle of *res ipsa loquitur*. The insurance company while putting in contest did not resist the said claim, failing to examine the driver of the insured vehicle. In these circumstances, there is no case made out for the finding on the issue of negligence to be interfered with.

4. The insurance company then raises the issue of absence of permit and seeks exoneration. It is noted that the tribunal had accepted the breach of the terms and conditions of the insurance policy on this count and has granted recovery rights to the appellant. Since the interest of the appellant / insurance company has been duly protected, there is no good reason to defeat the third party interest by allowing the plea of exoneration.

5. No other ground is urged in the appeal. The appeal is dismissed. The pending applications also stand dismissed.

6. By order dated 02.06.2011, the insurance company was directed to deposit the entire awarded amount with the Registrar General and from out of such deposit, 50% was allowed to be released to the claimants. The Registry shall release the balance in favour of the claimants refunding the statutory deposit to the appellant.

R.K.GAUBA, J.

OCTOBER 25, 2017
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