$~R-210

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

Decided on: 14th September, 2017

\+ MAC APPEAL 370/2010

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD. ..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

KAUSHLIYA & ORS. ..... Respondents

Through:

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

JUDGMENT (ORAL)

1. The accident claim case (suit no.355/2007) was instituted by first to fifth respondents on 10.10.2007 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 due to the death of Om Prakash in a motor vehicular accident that occurred on 29.08.2007 involving the negligent driving of a Tempo bearing registration no. PB-32-NTP-4822, admittedly registered in the name of the seventh respondent (registered owner). The case was based on the allegations that the cause for accident was the negligent driving by the driver (sixth respondent).

2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 29.03.2010, accepted the said claim for compensation holding the driver responsible. It determined the compensation in the sum of

Rs.13,15,200/- and directed the insurer to pay with interest at the rate of 7.5% p.a. During the course of inquiry, the insurer had raised the plea that there was a breach of the terms and conditions of the insurance policy as the vehicle was not covered by a valid permit. The evidence was led by examining Kirti (R3W1), Senior Executive (Legal) and Veer Narain Singh (R3W2), an official of Transport Authority. The conjoint effect of the evidence of the said witnesses was that though there was a valid permit in respect of the vehicle for the period 14.09.2007 to 13.09.2012, there was no valid permit for the period covering the date of accident. The Tribunal, however, failed to make any observations on the plea raised in defence by the insurer leaving the issue unaddressed.

3. By the present appeal, the insurer presses the appeal restricting it to seek recovery rights.

4. The appeal was admitted and directed to be listed in the category of 'regulars' by order dated 17.10.2012. When it is taken up for hearing, there is no appearance on behalf of sixth or seventh respondents. The matter has been heard with the assistance of the counsel for the insurer.

5. A perusal of the record of the tribunal confirms that the absence of permit had been duly proved. This constitutes breach of the terms and conditions of the insurance policy and there being no effort on the part of the registered owner to show facts to the contrary, the prayer is accepted. The recovery rights are granted in favour of the appellant against the seventh respondent (registered owner of the vehicle). For

enforcement of such rights, the insurer may take out appropriate proceedings before the tribunal.

6. The insurance company had deposited the awarded amount with the tribunal in terms of order dated 04.06.2010, and from out of such deposit 50% (fifty percent) was released to the claimants in terms of order dated 17.10.2012. The balance held in deposit shall also now be released to the claimants.

7. The statutory amount shall be refunded.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 14, 2017
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