

\$ 26 & 27

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

Decided on : 12th July, 2017

+ MAC.APP. 570/2017

SUNITA & ORS Appellants

Through: Mr. M.K. Sharma, Advocate

versus

THE ORIENTAL INSURANCE CO LTD Respondent

Through: Mr. S.P. Jain and Mr. Himanshu
Gambhir, Advocates

+ MAC.APP. 300/2017 and CM No.11641/2017

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. S.P. Jain and Mr. Himanshu
Gambhir, Advocates

versus

SUNITA & ORS Respondents

Through: Mr. M.K. Sharma, Advocate for
R-1 to 5

Mr. Sudhir K. Saneja, Adv. for R-6 & 7

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The impugned judgment passed on 25.01.2017 on the accident claim case (MACP 291/2014 of the appellants in MACA 570/2017 who are respondent nos.1 to 5 in connected MACA 300/2017) accepted the case that the accident had occurred resulting in death of Jitender Kumar due to rash or negligent driving of truck bearing no.

UP-78B-9298 by Rajendra Kumar, respondent in both the appeals. It is on the basis of the said finding that the compensation has been awarded and liability fastened on the insurance company to pay the same.

2. The insurer of the truck is in appeal questioning the said finding on the ground that evidence of Pappu (PW-2) presented as eye witness could not have been believed as the sequence of events narrated by him are not in *sync* with the facts and circumstances set out in the corresponding police case and that as per the police investigation presence of Pappu at the spot is not even remotely indicated.

3. The counsel for the claimants who have come with the cross-objections seeking enhancement since registered as MAC 570/2017 agrees that the impugned judgment may be set aside but requests that the claimants may be given one more opportunity to lead additional evidence by examining witnesses of the scene as mentioned in the police investigation report.

4. In view of the above, the impugned judgment is set aside. The matter is remitted to the Tribunal. The claimants will be granted an opportunity to lead additional evidence and thereafter the opposite parties which contest will be entitled to lead evidence in rebuttal, if any. The Tribunal shall take a fresh decision in the light of evidence adduced including additional evidence now permitted.

5. The parties shall appear before the Tribunal on 11.08.2017.

6. By order dated 24.03.2017 on MACA 300/2017, insurance company had been directed to deposit the awarded amount with interest with the Tribunal. The amount, if deposited, shall be presently

refunded.

7. The statutory amount shall also be returned.

8. Both appeals with pending application stand disposed of in above terms.

R.K.GAUBA, J.

JULY 12, 2017

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