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

Decided on: 1st November, 2017

+ **MAC APPEAL No. 797/2011**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD

..... Appellant

Through: Mr. A.K. Soni, Adv.

versus

KAMLESH & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Harish Chandra, engaged in private business, aged 35 years, died in motor vehicular accident that took place on 01.05.2008 due to negligence on the part of the driver (sixth respondent) of motor vehicle described as truck bearing registration no. HR 38E 3447 which was admittedly insured against third party risk at the instance of its registered owner (seventh respondent) with the appellant (insurer) for the period in question. On the accident claim case (suit no. 470/08), instituted on 19.07.2008, by the first to fifth respondents (collectively, the claimants) the tribunal, by judgment dated 19.05.2011, awarded compensation in the total sum of Rs. 37,33,056/-, fastening the liability to pay the same on the insurer (appellant). The insurer had raised the plea that since the vehicle in question was a goods vehicle

meant for carrying goods only, its use in towing away another vehicle (bus) amounted to breach of the terms and conditions of the insurance policy. This plea was rejected by the tribunal.

2. The appeal is pressed by the insurer to question the computation of compensation on two grounds; (1) that the parents (fourth and fifth respondents) could not have been treated as dependents and (2) that the liability towards income-tax should have been deducted. The insurer reiterates the plea of breach of terms and conditions of the insurance policy.

3. Having heard the learned counsel for the appellant, this Court finds that the appeal does not merit acceptance on any of the above-noted contentions. Merely because the parents are living away in the native village would not mean they cannot be dependents. The evidence of the claimants in this regard remains unimpeached. The income-tax returns (ITRs) proved by the claimants for assessment years 2001-02 to 2007-08 (collectively Ex.PW-1/7) reflect the income, there being no such tax liability in the last mentioned assessment year 2007-08. In this view, the non-deduction of any amount on this score cannot be faulted.

4. The tribunal has given sound reasons for rejecting the plea of breach of terms and conditions of the insurance policy. The vehicle in question was a transport vehicle and, therefore, the plea cannot be accepted.

5. The appeal is dismissed.

6. The insurance company had been directed by order dated 05.09.2011 to deposit the entire awarded amount and by subsequent

orders dated 30.03.2012 and 19.01.2016 part of the amount was released. The balance lying in deposit shall also now be released to the claimants in terms of the impugned judgment.

7. The statutory amount shall be refunded.
8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 01, 2017

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