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

Decided on: 3rd November, 2017

+ MAC.APP. 874/2011

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

RAMKALI & ORS

..... Respondents

Through: Mr. Arihant Jain, Adv. for R-4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 08.03.2009, Jitender Kumar was on board bus bearing registration no. DL 1PB 6235 (the bus), as a labourer, it plying on stage carriage route no. 502, in the territory of Delhi when the bus had reached the traffic signal on Tilak Marg red light and Bhagwan Das Road at about 5.00 a.m. it came to be involved in a collision with truck bearing registration no. HR 55 D 4914 (the truck). As a result of the impact, the bus caught fire, Jitender Kumar suffering 100% burns and dying in the consequence, this becoming subject matter of investigation by the police through first information report (FIR) No. 52/2009 under Sections 279/337/304A of Indian Penal Code, 1860 (IPC) of police station Tilak Marg. His mother, the first respondent

(the claimant) instituted accident claim case (suit no. 624/2009) on 05.11.2009 seeking compensation impleading amongst others, the owner and insurer of the bus, the said insurer being the appellant now before this Court. It may be mentioned here that the party respondents connected with the truck, however, stand exonerated of any liability.

2. Though the claim was initially filed under Section 166 of Motor Vehicles Act, 1988 on the request of the claimant, it was later converted into a case on the principle of no-fault liability under Section 163 A of Motor Vehicles Act, 1988. The tribunal awarded compensation in the total sum of Rs. 1,70,000/- and directed the insurer of the bus (appellant) to pay.

3. The appellant presses the appeal at hand on the ground that it should have been exonerated since there was no proof of the driver of the bus holding a valid or effective driving licence. It refers to the application moved by it on 03.07.2010 seeking opportunity to lead evidence about absence of any valid licence referring, *inter alia*, to a notice it had issued on 02.07.2010 under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) to the owner of bus for production of the relevant documents contending that there had been no response.

4. The plea of the insurance company to above effect did not find acceptance by the tribunal. In the light of facts and circumstances of the case and the proceedings recorded by the tribunal, it is found to be devoid of substance. The tribunal had noted in order dated 06.07.2010 that the investigating police officer had reported that all the documents including the licence of the driver of the bus had been burnt with the said vehicle, even the driver having died.

5. The appeal is dismissed.

6. By order dated 27.09.2011, the insurance company had been directed to deposit the entire awarded amount within the period specified. By order dated 18.03.2013, the said amount was permitted to be released to the claimant. Thus no, further directions are called for.

7. The statutory deposit of the insurance company shall be refunded.

NOVEMBER 03, 2017
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R.K.GAUBA, J.



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