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

Decided on: 31st August, 2017

\+ MAC.APP. 318/2015

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Sameer Nandwani, Adv.

Versus

JANKI DEVI & ORS ..... Respondents
Through: Mr. Abhindra Maheshwari, Adv. for R-1 to 5.

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

JUDGMENT (ORAL)

1. Sawal Dass, aged 27 years, died in a motor vehicular accident that occurred on 05.02.2013, statedly due to negligent driving of bus bearing registration no. UP 14BT 5565, it concededly being insured against third party risk with the appellant insurance company. His wife, two daughters and parents, they being first to fifth respondents (collectively, the claimants), instituted accident claim case (MACP No. 79/2013) before the motor accident claims tribunal on 04.03.2013, seeking compensation on the averments that the accident had occurred due to negligence on the part of the driver of the bus, he having been impleaded as first respondent in the claim proceedings, now shown in the array in appeal as sixth respondent, this in addition to the owner of the bus (seventh respondent in the appeal), he being second

respondent before the tribunal. The tribunal put the claim case to inquiry and, by judgment dated 07.01.2015, returned a finding, that the accident had occurred due to negligence in driving of the bus by the sixth respondent, holding him the principal tort-feasor. The seventh respondent (the registered owner of the bus), being vicariously liable on that account, was also held to be jointly and severally liable and since the bus was admittedly insured with the appellant, it was called upon to indemnify and pay the compensation which was determined in the total sum of Rs. 89,98,840/- (Rupees Eighty Nine Lakhs Ninety Eight Thousand Eight Hundred Forty Only) with which the interest @ nine per cent (9%) per annum was also levied.

2. It may be mentioned here that the insurance company in the contest had also pleaded that there was breach of terms and conditions of the insurance policy as the bus did not have a valid road permit for the place where the accident had occurred, it being in State of Delhi, the bus being registered in the State of Uttar Pradesh. The tribunal, however, rejected the said contention and declined to grant recovery rights which were pressed by the insurer.

3. The insurer, by the appeal at hand, has questioned the impugned judgment on various counts including, and primarily, on the ground that there was no proof of negligence on the part of the bus driver. It also questions the computation of compensation and reiterates its plea for recovery rights.

4. The claimants have appeared through counsel on notice. The sixth and seventh respondents, though served, have chosen not to appear at the hearing on the appeal. It is noted that the claimants had

examined the first respondent (wife of the deceased) as prime witness (PW-1) to bring on record the necessary proof about the loss of dependency and also the documents relating to the evidence gathered by the police during investigation into the corresponding criminal case, the other witnesses examined on behalf of the claimants being Vipul Goel (PW-2) and Pradeep Kumar Bhardwaj (PW-3), both in connection with the employment and earnings of the deceased.

5. After some hearing, the learned counsel for the claimants conceded that the evidence with regard to the negligence either through mouth-piece of the eye-witness or at least through the investigating police officer has not been adduced to bring home the case on the principle of fault liability. He, thus, fairly conceded, on instructions, that the impugned judgment may be set aside but his request is that the matter may be remitted to the tribunal so that the claimants get further opportunity to adduce proper evidence in above regard.

6. In the foregoing facts and circumstances, the impugned judgment is set aside. The claim case of the first to fifth respondents is remitted to the tribunal for further inquiry in the course of which opportunity shall be given to the claimants to adduce further evidence. If the contesting parties so request, they would also be given opportunity to lead evidence in rebuttal, if any. After such opportunity has been afforded to the parties which participate the tribunal shall render a fresh decision. The contentions of the insurance company about the computation of compensation respecting the plea of recovery rights are kept open and may be agitated before the

tribunal for consideration. Needless to add, the claimants will also be heard in such respect as well.

7. The parties shall appear before the tribunal for further proceedings on 11th October, 2017.

8. Given the old pendency of the case, it is desirable that the tribunal holds the further proceedings expeditiously and renders its fresh decision at an early date, preferably within six months of the date of first appearance, fixed as above. Needless to add, for this, all parties, particularly, the claimants will also have to render full cooperation.

9. By order dated 15.04.2015, the insurance company had been directed to deposit seventy per cent (70%) of the awarded amount with proportionate interest with the claims tribunal within the period specified, such amount having been directed to be put in fixed deposits. By subsequent order dated 20.11.2015, fifty per cent (50%) was allowed to be released to the claimants. It is stated by the counsel for the claimants that only part of the amount, thus released, was actually made available by being credited into the savings bank account on the claimants, the balance lying in the form of fixed deposit receipts. The amount already released by credit into the saving bank account shall be liable to be adjusted against the award that may be passed by the tribunal in the fresh judgment to be rendered. The balance amount lying in the fixed deposits which were permitted to be handed over to the claimants, as also the amount lying in balance with the tribunal, shall be presently refunded to the insurance company.

10. The statutory amount shall be refunded.

R.K.GAUBA, J.

AUGUST 31, 2017
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