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

Decided on: 7th September, 2017

+ **MAC APPEAL No. 775/2016**

BHARTI AXA GEN. INS. CO. LTD. Appellant
Through: **Mr. Navneet Kumar, Adv.**

versus

RAM SINGH & ORS. Respondents
Through: **Mr. Arun Srivastava, Adv. for**
R-1 & 2.

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

JUDGMENT (ORAL)

1. The judgment impugned by the appeal at hand was passed by the motor accident claims Tribunal on 09.02.2016 on the accident claim petition (case no. 77/2012) instituted by first and second respondents (collectively, the claimants) since Kallu @ Kallu Ram statedly died in motor vehicular accident that took place on the night intervening 20th and 21st November, 2011 allegedly due to negligent driving of motor vehicle described as Mahindra and Mahindra Tractor/Water tanker bearing registration no. DL 1E 1980, which was admittedly insured against third party risk with the appellant insurance company (insurer).

2. The insurer on which the liability to pay compensation determined by the tribunal has been fastened, questions the approach

of the tribunal in virtually dispensing with the proof of involvement of the vehicle in question in the accident or negligence on the part of its driver (third respondent herein).

3. After some hearing, the learned counsel for the claimants fairly conceded that the burden of proof of involvement of the vehicle in question and negligence on the part of the driver had to be discharged either by bringing on record the eye-witness account or the circumstances which would demonstrate the above facts through the mouth-piece of other witnesses including the investigating police officer. He thus, fairly, conceded, on instructions, that the impugned judgment may be set aside and requested that the matter may be remitted to the tribunal for further inquiry so that appropriate evidence may be adduced.

4. It is noted that the insurance company by the appeal at hand has also raised several other issues concerning the computation of compensation. Reserving all such contentions to be re-agitated before the tribunal for purposes of fresh determination of the compensation, the appeal is allowed and the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry. In the course of such further inquiry, the claimants will be given opportunity to adduce further evidence, followed by similar opportunity to the contesting parties to lead evidence in rebuttal, if any.

5. In the appeal third and fourth respondents (driver and registered owner of the vehicle) have not yet been served. Therefore, it

is directed that the tribunal, before proceeding ahead shall have the said parties served and then hold the further inquiry.

6. The parties shall appear before the tribunal on 12th October, 2017.

7. The statutory amount shall be refunded.

8. *Dasti.*

SEPTEMBER 07, 2017

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R.K.GAUBA, J.



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