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

Decided on: 13th July, 2017

\+ MAC.APP. 522/2016

BHARTI AXA GEN INS CO LTD ..... Appellant
Through: Mohd. Mustafa, Advocate

versus

NISHA & ORS ..... Respondents
Through: Mr. M.C. Dhingra, Adv. for R-3

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

JUDGMENT (ORAL)

1. An accident took place involving a motor vehicle described in the proceedings before the Motor Accident Claims Tribunal (Tribunal) as a new truck having chassis no.07389 and engine no.105205, it concededly being owned by the third respondent, the second respondent admittedly being its driver at the time the collision took place which is stated to be 12.15 a.m. (past mid night) on 15.06.2013, the place of accident being Gol Dhaba, AW Block, SGT Nagar, Delhi. The accident resulted in injuries being suffered by Mohd. Bismillah who died in the consequence. The accident claim case (MACT case no.37H/2013) was instituted by his widow (first respondent). Reliance was placed on an insurance policy covering third party risk in respect of the said vehicle issued by the appellant company

(insurer) for the period 31.05.2013 to 30.05.2014. Admittedly, on the date the insurance policy was issued, the vehicle had not been registered by the transport authority.

2. The Tribunal, after inquiry, by judgment dated 30.01.2016, awarded compensation in favour of the first respondent (claimant) and directed the insurance company to pay.

3. It is noted that the second and third respondents (driver and owner) had opted not to contest and suffered the proceedings *ex parte*.

4. The insurance company pleaded breach of the terms and conditions of the policy, *inter alia*, on the ground that the vehicle was not registered and, therefore, it should not have been brought on the public road and further that there was no permit taken out for the vehicle. The Tribunal was not impressed with the above defences and declined any relief to the insurance company.

5. The insurance company, by the appeal at hand, reiterates its defence of breach of terms and conditions of the insurance policy claiming it should at least have been granted recovery rights.

6. At the hearing, question arose as to what was the purpose of the journey during which the accident took place. The counsel for the third respondent submitted, on instructions, that the transport department had issued in the month of June 2013, a temporary registration in respect of the motor vehicle. He submitted that he is in a position to lead evidence to justify the journey undertaken on the public road during the course of which the accident took place. Since the material on record before the Tribunal on this score is hazy, it is desirable that both the insurer and the registered owner are granted

one more opportunity to prove their respective contentions.

7. Therefore, without disturbing the award in favour of the claimant, which the insurance company must satisfy forthwith, the issue with regard to the breach of terms and conditions of the insurance policy on above aspects is remitted to the Tribunal for further inquiry. During such further inquiry, it shall be the responsibility of the owner of the vehicle to adduce evidence not only to bring on record the facts concerning its registration but also the purpose of the journey undertaken on the relevant date. The insurance company will be entitled to lead evidence in rebuttal.

8. The recovery rights claimed by the insurance company against the registered owner of the vehicle will be regulated in accordance with the findings returned by the tribunal in the inquiry ordered above and, for this, the tribunal will issue the requisite directions.

9. The parties shall appear before the Tribunal on 16.08.2017.

10. The statutory amount shall be refunded.

11. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JULY 13, 2017
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