$~R-645

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

Decided on: 05th December, 2017

\+ MAC APPEAL 1162/2012 and CM 18802/2012 and 18804/2012

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD. ..... Appellant

Through: Ms. Suman Bagga and Ms. Anjali Chawla, Advocates

versus

SATBIR SINGH & ORS. ..... Respondents

Through: None

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

<u>JUDGMENT (ORAL)</u>

1. The insurer of the offending vehicle described as a truck bearing registration no.DL-1PB-7985 (truck) is aggrieved by the judgment dated 23.07.2012 in the accident claim case (suit no.626/2011) instituted by third and fourth respondents (collectively, the claimants) seeking compensation on account of death of Shamsher @ Sonu on the ground that the evidence led before the tribunal during inquiry showed that Satbir Singh (first respondent) did not have the due authorization to drive from the registered owner Rajender Singh (second respondent) and, therefore, the liability to indemnify could not have been fastened against the insurer. Reliance is placed on the

decision of the Supreme Court in *Eshwarappa alias Maheshwarappa and Anr. vs. C.S. Gurushanthappa and Anr., AIR 2010 SCC 2907.*

2. The learned counsel for the insurer has been heard and the record perused.

3. It does appear that the first respondent had not been engaged by the second respondent as the driver of the offending vehicle. It also does appear that he had started the vehicle on his own. But then, the fact that the vehicle had been left unattended by the driver actually engaged by the second respondent shows neglect on his part giving occasion for the vehicle to be driven in the manner leading to the fatal accident. In these circumstances, the liability has been correctly fastened against the person who was driving and also the registered owner of the vehicle and consequently the insurer cannot escape the liability. The ruling in the *Eshwarappa alias Maheshwarappa* (supra) is distinguishable on facts. The appeal is, thus, dismissed.

4. By order dated 06.11.2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest and from out of such deposit, fifty percent (50%) was directed to be released to the claimants. The balance with accrued interest shall also be released to the claimants in terms of the impugned judgment.

5. The statutory amount shall be refunded after proof of award having been satisfied is shown.

6. The appeal and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 05, 2017/yg