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

Decided on: 6th July, 2017

+ MAC.APP. 487/2017 and CM APPL.19915/2017 (delay)

USHA SHERAWAT Appellant
Through: Ms. Prabha Sharma, Advocate
with Mr. Balraj, Advocate

versus

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD & ORS
..... Respondent
Through: Mr. Arihant Jain, Advocate for
Mr. Rajat Brar, Advocate

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

JUDGMENT (ORAL)

1. The appellant concededly is the registered owner of bus bearing registration no.DL-1PB-4595 on account of negligent driving of which an accident is stated to have taken place on 19.05.2007 giving rise to a cause of action to claim compensation in favour of second respondent who filed a claim petition (petition no.522/2008) before the Motor Accident Claims Tribunal (the tribunal). The appellant herein was impleaded as second respondent in said proceedings and was concededly served and even filed a written statement seeking to contest. The said proceedings eventually resulted in judgment dated 13.05.2009 whereby compensation in the sum of Rs.92,500/- was awarded in favour of the second respondent with interest, the liability

having been fastened against the first respondent (insurer) which had issued an insurance policy covering third party risk at the instance of the appellant.

2. The insurer, however, had taken the plea of breach of policy condition on the ground the vehicle was not covered by a valid permit as on the date of the accident. This issue was considered on the basis of evidence led and the contention of the insurer was found to be correct. On the basis of such conclusion while being directed to pay compensation initially to the claimant, recovery rights against the appellant were granted by the Tribunal. She later moved an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) it being MACT No.114/2017, which was dismissed by the Tribunal by order dated 22.03.2017.

3. By the appeal at hand, challenge is brought to the conclusion reached by the Tribunal in the impugned judgment on the contention that the appellant had secured a valid permit ten days after the event and that there was no negligence on the part of the driver, the plea of the appellant primarily being that the claimant himself was negligent.

4. In above context reference is made to the admission in his cross-examination (as PW-1) that he was under the influence of liquor when he was crossing the road at the time of the accident. Mere admission that the claimant had partaken alcohol before coming on the road as pedestrian takes the appellant nowhere. The evidence otherwise led proved that the prime cause of accident was negligent driving on the part of the driver of the offending vehicle. Consumption

of alcohol is not shown by any material to have led to the faculties of the claimant being affected to such an extent as to have resulted or contributed to the cause for accident. The contention to such effect required some further proof being brought out during the cross-examination of the claimant at the time of inquiry which opportunity was never availed by the appellant.

5. The plea of the appellant that the counsel engaged by her was negligent has been duly considered and rightly rejected by the Tribunal by order dated 22.03.2017. Mere engagement of the counsel would not relieve the party of the duty to prosecute the defence effectively in the judicial forum particularly at the stage of inquiry.

6. It is inherent in the plea concerning the permit that there was no valid permit in existence on the date the cause of action arose.

7. In above view, the appeal is devoid of substance and is dismissed *in limine*.

8. The statutory amount, if deposited, shall be refunded only upon the liability in terms of the impugned award being satisfied.

R.K.GAUBA, J.

JULY 06, 2017

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