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

Decided on: 24th July, 2017

+ **MAC APPEAL No. 871/2016 & CM No. 38940/2016 (stay),
38942/2016 (additional evidence)**

**CHOLAMANDALAM MS GENERAL INSURANCE CO
LTD** Appellant

Through: Ms. Suman Bagga & Mr.
Pankaj Gupta, Advs.

Versus

RENU YADAV & ORS Respondents

Through: Mr. S.N. Parashar, Adv. for R-1
to R-4.

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

JUDGMENT (ORAL)

1. On the claim petition (MACP No. 281/2012) of the first to fourth respondents herein (the claimants), the tribunal, by the judgment dated 01.07.2016, awarded compensation in the sum of Rs. 61,11,520/- with interest @ 10 % per annum on account of death of Sandeep Kumar in a motor vehicular accident that occurred on 26.08.2012. The appellant insurance company (insurer) has been burdened with the liability to pay the said amount of compensation on the basis of finding that the accident involved collision between two vehicles, one being Santro car being registration no. HR 26 AY 0291

(hereinafter, the Santro car) and the other bearing Alto car bearing registration no. HR 13C 7968 (hereinafter, the Alto car). It is stated that the deceased was driving Santro car which was hit by Alto car coming from behind. The appellant insurer had admittedly issued insurance policy covering third party risk in respect of the Alto car.

2. Before the tribunal, evidence was led, primarily through Sanjay Kumar (PW-2) described as an eye witness to affirm the collision in the manner stated. The tribunal accepted the said evidence and returned a finding confirming the collision and holding the Alto car driver to be responsible for the accident and, thus, fastening the liability on its insurer. The insurer concededly did not lead any evidence before the tribunal in inquiry.

3. In appeal, the insurance company submits there was no accident involving collision between the two vehicles and, in this context, relies on mechanical inspection report of the two vehicles as were gathered during the investigation into FIR No. 193/2012 of police station Chhawla. Copies of the said mechanical inspection reports do indicate substantive damage to the Santro car in the front. The insurance company also refers to copy of intimation-cum-preliminary form submitted by Anand Yadav, the registered owner of the Santro car with regard to the accident describing the event as involving the vehicle having hit against a tree. Noticeably, in the said intimation-cum-preliminary form, there was no reference to collision between two vehicles. The registered owner of the Santro car Anand Yadav is admitted to be real brother of the deceased person.

4. The insurance company has filed application (CM No. 38942/2016) seeking permission to lead additional evidence to above effect. Though at the hearing, it was fairly conceded by the counsel for the insurer that such evidence could and should have been led during inquiry before the tribunal, the prayer for liberty to bring on record additional evidence is pressed on the plea that truth has to be brought out.

5. After some hearing, the learned counsel for the claimants submitted that instead of allowing additional evidence to be led during the appeal, the matter may be remitted so that he also gets an opportunity to examine the registered owner of the Santro car and further that both parties may have liberty to insist on the appearance of the driver of the Alto car as witness so that the entire facts and circumstances can be properly brought out and appreciated.

6. In view of the above, the impugned judgment is set aside. The matter arising out of the claim petition is remitted to the tribunal for further inquiry and fresh adjudication. The tribunal shall first give an opportunity to the insurance company to lead evidence and after such opportunity has been availed, the claimants will be given an opportunity for rebuttal.

7. The parties shall appear before the tribunal for further proceedings on 8th August, 2017. Needless to add, given the old pendency, the tribunal shall hold expeditious proceedings and make endeavour to conclude the inquiry and pass a fresh judgment at the earliest, preferably within three months of the date of first appearance before the tribunal in terms of these directions.

8. Statutory amount shall be refunded.
9. *Dasti.*

R.K.GAUBA, J.

JULY 24, 2017/nk

