$~5

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

Decided on: 4th September, 2017

\+ MAC.APP. 965/2016

SHRI RAM GENERAL INSURANCE COMPANY LTD

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

JAGDISH PRASAD YADAV AND ORS ..... Respondents

Through: Mr. R.K. Bachchan, Adv. for R-1 & 2.

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

JUDGMENT (ORAL)

1. The accident claim case (MACP 36/2011- new MACT No. 15170/2015) was instituted by the first and second respondents (collectively, the claimants) on 19.01.2011, seeking compensation on account of death of their bachelor son Vipin Yadav in motor vehicular accident that occurred on 12.11.2010, on the basis of averments that the collision against the motorcycle of the deceased (bearing registration No HR 35C 8213) had occurred due to negligent driving of Tavera Car bearing registration no. HR 55FT 7798 (the car) by the third respondent, it being registered in the name of fourth respondent

and admittedly insured against third party risk with the appellant insurance company (insurer). The tribunal accepted the said case and, by judgment dated 19.07.2016, awarded compensation fastening the liability to pay on the insurer.

2. The insurer, by the appeal at hand, assails the judgment of the tribunal primarily on the ground that there was no evidence to show the involvement of the car or negligence on the part of its driver, conclusions having been drawn on the basis of copies of record relating to the corresponding police case, in which the subject accident was investigated, questions also being raised respecting the correctness of the compensation awarded.

3. The learned counsel for the claimants at the hearing fairly conceded that in view of the judgments of the Supreme Court in *Oriental Insurance Company Ltd. v. Meena Variyal* 2007 (5) SCC 428 and *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai* (1987) 3 SCC 234 and of this Court in MAC Appeal No. 165/2013, *New India Assurance Co. Ltd. vs. Devki & ors.* decided on 29th February, 2016, it was the obligation of the claimants to prove not only the involvement of the offending vehicle but also negligence on the part of its driver. He also fairly conceded that in the police investigation an eye witness account was available and, therefore, it was possible for the claimants to have him summoned and examined him to prove the necessary facts. Against the above backdrop, while fairly conceding to the appeal of the insurance company to be allowed on the above narrow issue, he requested, on instructions, that the

matter may be remitted to the tribunal so that the claimants get an opportunity to discharge their burden of proof.

4. The impugned judgment is set aside. The claim case of the first and second respondents is remitted to the tribunal for further inquiry in the course of which the claimants will be given opportunity to lead additional evidence, particularly, on the issue of involvement of the car and negligence on the part of its driver. Needless to add, the parties which contest shall also be given opportunity to lead evidence in rebuttal, if any. The contentions of the parties on the question of computation of compensation are reserved and may be agitated before the tribunal at the time of fresh adjudication.

5. The parties shall appear before the tribunal on 12th October, 2017. The presence of third and fourth respondents (driver and registered owner of the offending vehicle) at the hearing on appeal was dispensed with by order dated 25.01.2017. Before proceeding further with the fresh inquiry, the tribunal shall issue notices to secure their presence.

6. The amount of compensation deposited by the insurance company in terms of interim order 18.11.2016 with accrued interest shall be refunded by the tribunal to the insurance company.

7. The statutory deposit shall also be refunded.

R.K.GAUBA, J.

SEPTEMBER 04, 2017
nk