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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 20th November, 2017

\+ **MAC.APP. 815/2016**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Pankaj Seth with Mr. Shumik Mazumdar, Advocates.

versus

MANJU BALA & ORS ..... Respondents
Through: Mr. Pratap Singh with Mr. Rajveer Nanwal, Advocates.

\+ **MAC.APP. 853/2017 & CM APPLN. 34504-506/2017**

MANJU BALA & ORS ..... Appellants
Through: Mr. Pankaj Seth with Mr. Shumik Mazumdar, Advocates.

versus

SABBIR & ORS ..... Respondents
Through: Mr. Pratap Singh with Mr. Rajveer Nanwal, Advocates.

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

JUDGMENT (ORAL)

1. Babu Ram Gola, aged 47 years, described as a qualified Ayurvedic Doctor, earning his livelihood from medical practice, died due to injuries suffered in a motor vehicular accident that occurred on 15.04.2014. His wife and three children (collectively, the claimants) instituted accident claim case (Suit No. 544 / 2014) on

03.07.2014, alleging that the accident had occurred when the motorcycle driven by the deceased was hit by truck bearing registration No. HR-29V-3177 (the truck) driven by Sabbir (driver) in negligent manner. The truck admittedly was registered on the relevant date in the name of Gurdev Singh (owner), another respondent in these appeals, and was concededly insured against third party risk with New India Assurance Company Limited (insurer), the appellant in MAC. Appeal No. 815/2016.

2. The Tribunal held inquiry and returned finding, by judgment dated 16.05.2016, accepting the case of the claimants about the accident having been caused leading to the death on account of negligence on the part of the driver of the truck. It awarded compensation in the sum of Rs.24,35,000/- and directed the insurer to pay with interest @ 9% (nine per cent).

3. The insurer has come up in appeal (MAC. Appeal No.815/2016) submitting that there was no evidence led on the issue of negligence on the part of the truck driver and, therefore, the finding is without basis. The insurer also questions the computation of compensation. *Per contra*, the claimants have also come up in appeal (MAC. Appeal No.853/2017) submitting that the income of the deceased was wrongly assumed, the income tax return for assessment year (AY) 2013-14 having been ignored. The claimants, thus, seek enhanced compensation.

4. After some hearing, the learned counsel for the claimants fairly conceded that the evidence on the issue of negligence has not been properly brought out before the Tribunal during the inquiry. Thus,

agreeing to the request of the insurer for the impugned judgment to be set aside, the request was made by the claimants for grant of further opportunity to lead additional evidence particularly on the issues of negligence and income of the deceased.

5. In the foregoing facts and circumstances, the impugned judgment is set aside. The claim case is remanded to the Tribunal for further inquiry in accordance with law. In the course of further inquiry, the claimants will be called upon to lead additional evidence whereafter the respondents will be given similar opportunity to lead additional evidence in rebuttal, if any. The Tribunal shall then pass a fresh judgment not feeling bound by the view taken earlier on any of the relevant aspects.

6. By order dated 07.10.2016 in MAC. Appeal No. 815/2016, the insurance company had been directed to deposit the entire awarded amount with up to date interest at 9% per annum with State Bank of India, Saket Courts Branch, the bank having been directed to retain it in the account of first claimant Manju Bala. The order was modified later by order dated 28.11.2016 to the effect that the entire deposited amount along with interest was to be transferred to the claimants in the form of fixed deposit receipt to enable them to withdraw only the interest accrued thereon. The learned counsel for the insurer submits, and the counsel for the claimants confirms, that instead of strict compliance with the above directions, the amount was deposited by the insurer with UCO Bank, Delhi High Court Branch and the claimants have been receiving the accrued interest periodically from such deposit. The Registry shall ensure that the amount deposited is

made available to the Tribunal which shall retain it in the form of fixed deposit receipt for a period of six months with provision for auto renewal. The existing arrangement of payment of accrued interest to the claimants shall continue. The amounts which have been received or will be received in future by the claimants under such arrangement will be subject to adjustment against the principal amount awarded at the time of fresh adjudication by the Tribunal.

7. The Tribunal will have the liberty to apply the principal amount in such deposit to be retained in a fixed deposit account in terms of the fresh adjudication.

8. The statutory amount shall be refunded to the insurance company.

9. The parties are directed to appear before the Tribunal on 21.12.2017.

10. Both the appeals are disposed of in above terms.

R.K.GAUBA, J

NOVEMBER 20, 2017
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