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

Decided on: 18th September, 2017

\+ MAC.APP. 742/2017

GOPAL .... Appellant

Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates

versus

NEW INDIA ASSURANCE CO LTD & ORS ..... Respondents

Through: Mr. Vijay Singh and Mr. Abhishek Kumar, Advocates for R-1

\+ MAC.APP. 1110/2016 and CM 47971/2016

NEW INDIA ASSURANCE COMPANY LTD ..... Appellant

Through: Mr. Vijay Singh and Mr. Abhishek Kumar, Advocates

versus

GOPAL & ORS ..... Respondents

Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates for R-1

\+ MAC.APP. 197/2017

RAMESH CHAND JAIN ..... Appellant

Through: Mr. Navneet Goyal, Adv.

versus

THE NEW INDIA ASSURANCE CO LTD
& ORS ..... Respondents

Through: Mr. Vijay Singh and Mr. Abhishek Kumar, Advocates for R-1
Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates for R-2

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

JUDGMENT (ORAL)

1. Insurer (appellant in MACA 1110/2016), and the claimant (appellant in MACA 742/2017) are aggrieved with the quantum of the award granted by the tribunal by the impugned judgment dated 15.11.2016 whereby recovery rights were also granted in favour of the insurer against Ramesh Chand Jain, registered owner of the offending vehicle (appellant in MACA 197/2017) on the basis of finding to the effect that the driver of the offending vehicle, Desh Pal, one of the respondents in these appeals did not hold a valid or effective driving licence for purpose of a vehicle meant for carrying hazardous goods. While the claimant submits his functional disability should have been treated as 100%, the insurer questions such assessment on the ground that the evaluation of the disability to the extent of 90% by the tribunal was not based on any evidence, neither the doctor (PW-2) (Dr. Puneet Mishra) nor the claimant himself (PW-1) being very explicit as to the nature of the impairment or its lasting effect on the earning capacity. Besides this, the insurance company also raises contention about the rate of interest (12% p.a.) terming it as excessive.

2. The registered owner of the vehicle (appellant in MACA 197/2017) has also come up to challenge the said judgment to the extent recovery rights were thereby granted against him on the contention that the evidence about the validity of the licence held by the driver was not properly appreciated, he also placing reliance on the fact that the driver had undertaken a special training from Indian Training Institute of Hazardous Goods Transportation at Roorkie, evidence in which regard was discarded by the tribunal for the reason that no official from the said institute had been examined.

3. After some hearing, the learned counsel on all sides fairly agree that the matter would require further evidence, particularly on the crucial issues of functional disability and on the competence of the driver vis-à-vis the vehicle meant for carrying hazardous goods. On the joint request of the counsel for the claimant and the registered owner, to which the counsel for the insurer has no objection, the impugned judgment is set aside. The claim case is remitted to the tribunal for further inquiry during which the claimant will be given an opportunity to lead further evidence followed by similar opportunity to lead evidence in rebuttal to the parties that contest.

4. In terms of order dated 06.03.2017 on MACA 1110/2016, the insurance company had been directed to deposit the entire awarded amount and out of such deposit, 50% (fifty percent) was allowed to be released to the claimant. Such amount as has already been released to the claimant shall be liable to be adjusted against the award that is eventually passed by the tribunal. The balance lying in deposit shall be presently refunded to the insurance company.

5. The parties shall appear before the tribunal for further proceedings on 23.10.2017.

6. The statutory deposit of the insurance company shall be refunded.

7. The appeals and the pending application are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 18, 2017
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