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

Decided on: 6th November, 2017

\+ MAC.APP. 675/2015 & CM No. 16620/2015 (for condonation of delay)

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga & Ms. Anjali Chawla, Advs.

versus

RAJENDER RAVIDAS & ORS ..... Respondents

Through: None.

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

JUDGMENT (ORAL)

1. The insurer (the appellant) of the vehicle, the driver (the third respondent) whereof was found to be at fault, his negligence having resulted in a motor vehicular accident that occurred on 02.06.2010, giving rise to cause of action in favour of first and second respondents (collectively, the claimants) to seek compensation on account of death of their daughter Pinki Kumari alias Pinki by accident claim case (suit no. 134/2013) instituted on 29.07.2010, while contesting had raised the plea of breach of terms and conditions of the insurance policy

which was earlier issued in respect of the said vehicle at the instance of its registered owner (fourth respondent), on the ground that the vehicle (the tractor) bearing registration no. DL-1E-1600, attached with two water tankers, had turned into a transport vehicle on which account the liability of the insurer to indemnify would cease. The tribunal while granting compensation to the claimants, by judgment dated 06.04.2015, has taken note of such submission, as also the evidence led by the insurer on the issue through statement of Seema Sehrawat (R3W1) Senior Executive (legal), but short-shrifted the plea by observing that the insurer is free to claim recovery of the amount from the owner of the offending vehicle, if permissible by law.

2. On 12.07.2017, it was submitted by the learned counsel for the appellant that the appeal is pressed only for recovery rights based on the above facts and circumstances. In this view, the awarded amount deposited by the insurer company with interest accrued thereupon was permitted to be released to the claimants and their presence in the further proceedings was dispensed with.

3. The third and fourth respondents (i.e. driver and owner respectively of the offending vehicle), though served, have failed to appear to assist.

4. Having heard the learned counsel for the insurer on the limited issue of the recovery rights, this court is of the opinion that the proper course would be to remit the matter, to that extent, to the tribunal for appropriate adjudication inasmuch as it has unjustifiably failed to render a clear decision in this regard.

5. Thus, the plea of the insurance company for the recovery rights against third and fourth respondents herein is remitted to the tribunal for proper adjudication by a fresh order which would be treated as an order in continuation of the judgment dated 06.04.2015. The insurer (the appellant), the driver (third respondent) and registered owner (fourth respondent) are directed to appear before the tribunal on 5th December, 2017.

6. The statutory amount shall be refunded.

7. The appeal is disposed of accordingly.

R.K.GAUBA, J.

NOVEMBER 6, 2017
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