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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 20th November, 2017

\+ MAC.APP. 681/2015 and CM APPL.17379/2015

THE ORIENTAL INSURANCE CO LTD .....Appellant

Through: Mr. J.P.N. Shahi with Mr. Kamal Dhingra, Advocates.

versus

SANJU BALA & ORS ..... Respondents

Through: Mr. S.N. Parashar, Advocate for R-1 to 5.

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

JUDGMENT (ORAL)

1. By judgment dated 26.05.2015, the Motor Accident Claims Tribunal decided the accident claim case (suit No.130/2014) of first to fifth respondents (collectively, the claimants), awarding compensation after returning a finding that Narayan Singh had died as a result of injuries suffered by him in a motor vehicular accident that took place on 18.02.2013 at about 11.50 P.M. due to negligent driving of Trailer lorry bearing No.HR-38N-9699 by the sixth respondent (driver), it having collided against Eicher van bearing No. HR-55J-8384 which, in turn, was driven at the relevant point of time by the deceased Narayan Singh.

2. The insurance company on which the liability to pay compensation has been fastened by the Tribunal questions the said

finding on the issue of negligence and has also raised certain contentions with respect to the computation of compensation.

3. At the hearing, the learned counsel for the claimants fairly conceded that an eye-witness was available who could have proved the negligence but he was not examined at the inquiry before the Tribunal on the assumption that the same would not be necessary. He submitted that while the claimants concede that the impugned judgment may be set aside, the request is made for the matter to be remanded so that the eye-witness account can be brought on record.

4. In the facts and circumstances of the case, the request to the above effect is accepted. The impugned judgment is set aside. The claim case is remanded to the Tribunal for further inquiry in which the claimants will be given opportunity to lead further evidence, particularly on the question of involvement of the insured vehicle and the negligence on the part of his driver. After said opportunity has been offered, the parties which contest shall also be given similar opportunity to lead evidence in rebuttal, if any. The Tribunal, thereafter, shall pass a fresh judgment not feeling bound by the view taken earlier on any of the relevant aspects.

5. By order dated 28.08.2015, the insurance company had been directed to deposit the entire awarded amount with the Registrar General as a pre-condition to the stay against execution and out of such deposit 50% was permitted to be released, the balance retained in interest bearing fixed deposit. The balance which was retained with accrued interest shall be presently refunded along with statutory deposit to the insurance company. The amount already released to the

claimants shall be subject to suitable adjustment or such other directions as may be deemed necessary by the Tribunal in the light of fresh adjudication.

6. The parties shall appear before the Tribunal on 20th December, 2017.

7. The appeal and the application filed therewith stand disposed of.

R.K.GAUBA, J

NOVEMBER 20, 2017
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