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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ MAC.APP. 905/2017 & CM Nos. 37069-70/2017, caveat 895/2017
RELIANCE GENERAL INSURANCE CO LTD Appellant
Through: Mr. Arun Yadav, Adv.

versus

SATVINDER KAUR & ORS Respondents
Through

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

ORDER
% **16.10.2017**

The insurance company on which the liability to pay the compensation has been fastened by the tribunal by its judgment dated 04.07.2017 is in appeal raising the issue of contributory negligence on the part of deceased Harpal Singh who was riding a two wheeler scooter described as Honda Twister (Scooty) bearing registration no. DL 7S BM 2274 on 08.07.2014 when it came to be involved in a collision at 5.15 a.m. with motorcycle bearing registration no. DL 13 SC 4521 (the motorcycle) which is insured with the appellant insurance company. The injuries sustained by Harpal Singh proved fatal as he died during the treatment on 12.07.2014. The insurance company had raised the issue of contributory negligence before the tribunal but the same has been rejected, reference in this regard being made to the pleadings of the parties and to the evidence of eye-witness Budhan Yadav (PW-2) examined by the claimants on one

hand and the testimonies of Fazlu (R1W1) and Amit Gaine (R1W2), the driver of the motorcycle and the pillion rider travelling with him respectively. The contesting parties had also relied on the evidence of ASI Satpal Singh (R3W1), the second investigating officer of the corresponding police case who, in the course of his evidence had referred to, copy of the statement under Section 161 of Code of Criminal Procedure, 1908 (Cr.P.C) (mark 'X') of one Manoj Kumar also brought on record. It is the said document (mark 'X') which is the basis of the plea urged by the insurance company in appeal to the effect that the deceased was moving in the wrong direction though along the footpath. The document (mark 'X') being copy of statement under Section 161 Cr.P.C. cannot even be looked into particularly as Manoj Kumar has not been examined. The fourth respondent Fazlu (the driver of the motorcycle) and Anis (fifth respondent), the registered owner of the motorcycle had not taken any plea of negligence on the part of the deceased person. The tribunal has thus, given sound reasons for rejecting the evidence led on their behalf about the deceased riding the Scooty in the wrong lane. The testimony of Budhan (PW-2) to the contrary supporting the case of the claimants has remained unimpeached.

In these facts and circumstances, the appeal is found devoid of substance and is dismissed in *limine*.

All applications and caveat petition stand rendered infructuous and are disposed of.

R.K.GAUBA, J

OCTOBER 16, 2017

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