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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 15th November, 2017

+ MAC.APP. 997/2017 & CM No.41230/2017(for ex parte stay)

NATIONAL INSURANCE CO LTD Appellant

Through: Ms. Shuchi Singh, Adv.

versus

ALAGU @ HALKU & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. By judgment dated 29.07.2017, the motor accident claims tribunal decided two claim cases, one (petition no.76308/2016) instituted by the first respondent (the claimant) Alagu @ Halku and the other (petition no. 77240/2016) by Ram Babu, both having arisen out of the same set of facts, it having been alleged that on 24.10.2009, a motor vehicular accident had taken place at 02:30 hrs on the main road in front of Gupta Farm House, wherein TATA tempo bearing registration number DL-1LD-4194 (the tempo) had collided against container truck bearing registration no. RJ-11-GA-1487 (container truck). The claimant Alagu @ Halku was admittedly travelling in the tempo as a helper, it being driven by the other claimant Ram Babu. The truck, on the other hand, was proved at the inquiry to have been driven by Shokat Ali (the second

respondent), it being registered in the name of Balvinder Kaur (the third respondent, owner) at whose instance it had been insured against third party risk for the period in question with the appellant (the insurer). The case of the two claimants before the tribunal was that the accident had occurred on account of negligence on the part of the truck driver. Evidence was adduced in the course of which the claimants were examined, Ram Babu as PW1 and Alagu @ Halku as PW2. It is clear from the record that the truck driver was not examined by any of the contesting parties including the appellants. The contest was primarily on the ground that there was no negligence on the part of the truck driver, the accident having occurred solely on account of rash driving by the tempo driver. The tribunal rejected the plea *inter alia* observing that no evidence has been adduced to affirm the fact that the driver of the truck was not driving the offending vehicle at the relevant period of time.

2. By the appeal at hand, the insurance company questions the impugned award passed in favour of the first respondent only on the ground that this was a case of contributory negligence on which account the liability should have been apportioned.
3. There was no effort made at the stage of inquiry before the tribunal to implead the tempo driver or anyone connected with the tempo as party respondents. Even if the plea of the contributory negligence were to be accepted, it would only mean in the case of first respondent to be a case of composite negligence. The choice of the claimant to proceed against the truck driver to seek compensation cannot be questioned.

4. The appeal and the application filed petition therewith are dismissed in limine.

R.K.GAUBA, J.

NOVEMBER 15, 2017

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