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

\+ MAC.APP. 398/2017

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD .... Appellant
Through: Mr. M.P. Shahi, Advocate with Ms. Yogita Sharma, Deputy Manager

versus

ANJU DEVI AND ORS .... Respondents
Through: Mr. Saurabh Kansal, Ms. Pallavi S. Kansal and Mr. Deepak Pandey, Advocates for respondents No.1 to 5

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 20.03.2018

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.25,36,415/- has been awarded to respondents No.1 to 5.

2. Learned counsel for the appellant submits that the respondents have not proved the negligence by examining any witness.

3. Learned counsel for the respondents submits that the eye witness, Navneet Gupta is present in Court and his evidence be recorded. Learned counsels for the respondents submit that the respondents be also given liberty to examine other witnesses considered necessary in the matter.

4. Learned counsel for the appellant submits that the matter be remanded back to the Claims Tribunal to enable the appellant to rebut the evidence being led by the respondents.

5. With the consent of both the parties, the impugned award is set aside and the matter is remanded back to the Claims Tribunal for recording the additional evidence of the eye witnesses to the accident. After recording the

additional evidence, the Claims Tribunal shall afford an opportunity to the appellant to lead the evidence. The Claims Tribunal shall pass a fresh award after recording of the additional evidence of both the parties.

6. Learned counsel for the appellant further submits that the quantum of compensation awarded by the Claims Tribunal is on higher side. The Claims Tribunal shall also consider the appellant's objection with respect to the quantum of compensation awarded by the Claims Tribunal.

7. Learned counsel for the appellant submits that the award amount has been recovered by the Claims Tribunal by attachment of the appellant's bank account out of which 50% amount has been released to respondents No.1 to 5 and the balance amount is lying with the Claims Tribunal. The Claims Tribunal shall retain the balance amount in fixed deposit till fresh award is passed. The amount already released to the respondents be adjusted against the fresh award to be passed by the Claims Tribunal after recording of the additional evidence.

8. This Court is of the view that it is a paramount duty of the insurance companies to verify every claim by appointing an investigator to verify the claim and a surveyor to assess the loss. In the recent judgement dated 07th March, 2018 in MAC.APP. 802/2017 titled ***ICICI Lombard General Insurance Company Ltd v. Dinesh Kumar***, this Court has observed as under :-

> *"6. This Court is of the view that the cases like the present one have arisen because of the failure of the insurance companies to appoint an investigator to verify the genuineness of the accident and a surveyor to assess the loss. This practice is being regularly followed by the insurance companies in all cases other than motor accident claims. However, in cases of death and injuries arising out of the motor accident claims, the insurance companies do not ordinarily appoint any investigator or surveyor and they file the written statement to deny everything for want of knowledge except the insurance policy. The result of such an approach is that the claimants exaggerate their claims to any extent as it has happened*

in the present case. If the insurance company, in the present case, had appointed the investigator and surveyor immediately upon receiving the copy of DAR/claim application, this situation would not have arisen. In the present case, the insurance company is not even aware of the correct factual position which they were duty bound to ascertain immediately upon getting the intimation about the accident. Be that as it may, the insurance company is at liberty to appoint an investigator/surveyor even at this stage and to lead additional evidence before the Claims Tribunal. In MAC.APP.821/2017 titled Bajaj Allianz General Insurance Co. Ltd. v. Devi Nandam Kumar, decided on 21st February, 2018, this Court observed as under:

> *"This Court is of the view that the insurance companies are duty bound to verify every claim by appointing an Investigator to verify the genuineness of the claim as well as the material particulars of the claim and a surveyor to assess the loss suffered by the victim. In cases of grievous injuries, the insurance companies should also get the injured examined by an independent medical expert to examine the injured and verify the medical claim of the injured. However, the appellant, in the present case, does not appear to have appointed any Investigator or surveyor to verify and assess the claim of respondent No.1."*

9. The parties shall appear before the Claims Tribunal on 18th April, 2018 at 02:30 p.m.

10. The Claims Tribunals shall expedite the hearing in this matter and endeavour to decide within a period of six months from the first date of recording of the additional evidence.

11. Appeal is disposed of in the above terms.

12. The record of the Claims Tribunal be returned forthwith along with copy of this order.

13. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

MARCH 20, 2018/rsk