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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 16th January, 2018

\+ MAC.APP. 599/2017 & CM No.24815/2017

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD
..... Appellant

Through: Mr. Pradeep Gaur with Mr. Himanshu Joshi, Advocates

Versus

BEENA YADAV & ORS ..... Respondents

Through: Ms. Kawaljit Kaur for Mr. Nitin Yadav, Advocate for R-1 to 5.

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

JUDGMENT (ORAL)

1. The background facts leading to the filing of the present appeal by the insurance company were noted in the proceedings recorded on 28.08.2017 which read thus:-

> "*The appeal by the insurance company takes exception to the judgment of the Tribunal on the ground that no proof of involvement of the insured vehicle or negligence on the part of its driver was adduced, the facts to that effect as alleged being doubtful as the FIR was lodged belatedly.*
>
> *The counsel appearing for the first to fifth respondents (claimants) on being asked submitted that the driver and owner (sixth and seventh respondents) in their written statement had taken the position that the insured vehicle was not involved. If that be so, a question of fact had arisen as to whether the accident in which the death giving rise to cause of action had occurred had*

been caused due to involvement of the insured vehicle and, if so, further as to whether the negligence on the part of the sixth respondent (driver) was the reason leading to such occurrence.

The counsel for the claimants on being further asked fairly conceded that no witness affirming on oath the involvement of the vehicle or negligence on the part of the driver of such vehicle has been adduced during the inquiry before the Tribunal.

The counsel for the claimants further submitted that the amount awarded by the Tribunal with the corresponding interest has already been recovered by attachment and also that the amount has also been released to the claimants. He, however, refused to divulge the date of the release.

It is noted that the insurance company has now filed proof of service of the advance notice on the caveators which confirms that the advance copy of the appeal had been duly served on the counsel for the claimants by speed post, it having been delivered to him on 14.07.2017. It is noted that, inspite of such notice, there was no appearance on behalf of the caveators on 17.07.2017. It is clear the absence on 17.07.2017 by the claimants was deliberate and intentional. The possibility of release of the amount having been secured to frustrate the appeal, particularly on account of intentional absence from these proceedings on 17.07.2017 cannot be ruled out.

The counsel for the claimants, however, also disclosed that the amount released into the account is Rs.10,40,331/-, the entire balance having been put in fixed deposit receipts in different portions in favour of the respective claimants. On being asked, the counsel would not give a clear reply as to whether the fixed deposit receipts have been handed over to the claimants or not.

The release of any amount from the fixed deposit receipts is stayed till further orders. If the original instruments (FDRs) have been handed over to the claimants, they would be duty bound to return them to the tribunal to be retained till further directions.

A compliance report shall be submitted by the claimants and by the tribunal within two weeks.

Reply, if any, be filed within the same period.

The tribunal's record shall be called for.

Be listed on 19.09.2017.

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2. The compliance not having been made in terms of the aforementioned order, further directions were given by order dated 19.09.2017 and against such backdrop the submissions of the parties were recorded in the proceedings of 12.10.2017 as under:-

" During the course of hearing, the counsel representing the claimants submitted that he concedes to the submission of the insurance company that the evidence adduced during inquiry before the tribunal was deficient in that there was no evidence worth the name showing the involvement of the insured vehicle or negligence on the part of the driver. He, however, also submitted on instructions that though the appeal may be allowed and the impugned judgment may be set aside, the matter may be remitted to the tribunal for further inquiry so that the claimants may adduce the requisite evidence to show involvement of the insured vehicle and negligence on the part of its driver.

The report dated 03.10.2017 of the Presiding Officer of the Tribunal with explanation in terms of *previous order has come on record. Meanwhile the Registry has also received earlier communication dated 19.09.2017 which reached the Registry on 20.09.2017, after the hearing on 19.09.2017. The claimants have also submitted their compliance report dated 21.09.2017. Read together, the said submissions make it clear that the fixed deposit receipt(s) in the amount of Rs.52 Lakhs are still held by the bank. The bank shall presently return the said amount with accrued interest to the insurance company.*

The counsel representing the claimants has submitted that the amount of Rs.10,40,331/- was released directly into the account of the claimants. He, on instructions, undertakes to refund the amount of Rs.5,00,000/- as can be arranged presently to the insurance company, through the tribunal, within 30 days.

In the facts and circumstances noted in the previous proceedings and above, the claimants will be obliged to not only refund the said amount presently to the insurance company as undertaken on their behalf but also the balance within the same period or, in the event of inability to do so immediately, by presently offering sufficient security in such regard.

The appeal shall be listed for hearing against the above backdrop, after compliance with the directions noted above, on 18.12.2017."

3. The learned counsel appearing for the claimants submits, on instructions, that an amount of Rs.5,00,000/- (Rupees Five Lakhs) has been deposited in the form of demand draft with the Tribunal and that certain security has also been offered for the remainder amount. The counsel for the claimants reiterates the submissions made on 12.10.2017 and requests that the claim case may be remitted to the

Tribunal for further inquiry after the impugned judgment is set aside.

4. The impugned judgment is, thus, set aside. The claim case is remitted to the Tribunal for further inquiry in accordance with law. Before proceeding further, the Tribunal shall ensure that the amount deposited by the claimants in the form of demand draft, as mentioned above, is released to the insurance company. The Tribunal shall issue necessary directions for refund of the remainder of the amount which was earlier released to the claimants by specifying the time line for such purposes and for the interregnum take sufficient security.

5. The parties shall appear before the Tribunal for further proceedings on 28.02.2018.

6. The statutory amount shall be refunded to the insurance company.

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

R.K.GAUBA, J.

JANUARY 16, 2018
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