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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 5th January, 2018

+ MAC.APP. 1021/2017 & CM Nos. 42400-401/2017

NATIONAL INSURANCE CO LTD Appellant

Through: Ms. Shuchi Singh with Mr. Sanjay
Kumar Dubey, Advocates

versus

RAM BABU & ORS Respondents

Through: Mr. Sanjiv Gupta, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Two accident claim cases were instituted on 24.11.2010 and 09.11.2009, they being petition Nos. 76308/2016 brought by one Alagu @ Halku and another petition No. 77240/2016 of Ram Babu (the first respondent) in the present appeal. Both the claim cases had arisen out of the same motor vehicular accident that statedly took place on 24.10.2009 involving two vehicles, one being tempo TATA 407 bearing registration No. DL-1LD-4194 (TATA 407) and the other being container truck bearing registration No. RJ-11-GA-1487 (the truck). While TATA 407 was admittedly driven by the first respondent (the claimant), the other claimant (Alagu/Halku) was travelling in the said vehicle. The Truck, on the other hand, was statedly driven by Shokat Ali (second respondent), it being registered

in the name of Balvinder Kaur (third respondent) and, admittedly, insured against third party risk with National Insurance Co. Ltd (the appellant) for the period in question.

2. Both cases were clubbed by the Tribunal for inquiry and decided by common judgment dated 29.07.2017. It appears the appellant (insurer) while contesting the said case had raised the issue of contributory negligence on the part of driver of TATA 407 i.e. the first respondent. This plea was rejected by the Tribunal and compensation was awarded on the liability being fastened against the insurer of the truck.

3. By the appeal at hand the insurer of the truck reiterates the plea of contributory negligence. The first respondent, however, appears on advance copy, through counsel, to point out that in another appeal (MAC Appeal No. 997/2017) preferred by the same very insurance company in respect of the award of compensation in favour of other claimant Alagu @ Halku, similar plea raised by the insurer has already been considered and rejected by judgment dated 15.11.2017. He submitted a copy of the said judgment of this Court dated 15.11.2017.

4. Learned counsel for the insurer fairly concedes that the issue has already been considered by this Court in the other appeal. Since both the appeals arose out of the same/common judgment of the Tribunal, the issue cannot be allowed to be agitated again.

5. Following the view taken in MAC. Appeal No. 997/2017, decided on 15.11.2017, the present appeal is dismissed. The

applications filed therewith are rendered infructuous and also stand dismissed.

R.K.GAUBA, J.

JANUARY 5, 2018

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