

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

Date of Decision: September 06, 2018

+ **MAC.APP. 1008/2015 & CM 31996/2015**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

.....Appellant

Through: Mr. Amit Kumar Agarwal, Advocate

versus

RASHMI SHARMA & ANR.

.....Respondents

Through: Mr. B.K. Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

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1. Impugned Award of 14th October, 2015, grants compensation of ₹33,90,272/- with interest @ 10% *per annum* to respondents-*Claimants*. The facts are already noticed in the impugned Award and so, needs no reiteration.
2. The challenge to impugned Award by learned counsel for *Bajaj Allianz General Insurance Co Ltd* (hereinafter referred to as '*Insurer*') is on the ground that the negligence of the driver of the insured car does not stand proved. It is submitted that the happening of the accident in question is not proved. It is also submitted that neither the eye-witness nor the Investigating Officer of the police case has been examined.
3. Learned counsel for the respondents-*Claimants* submits that despite depositing the expenses for summoning the eye-witness-*Mudit*,

the driver and the Investigating Officer, they have not been summoned by the *Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal')*.

4. Upon hearing and on perusal of the impugned Award and the record, I find that finding returned by the Tribunal on the negligence aspect cannot be sustained as from the copy of the FIR, it cannot be inferred as to how the accident had taken place. Neither the eye-witness is forthcoming nor has the Investigating Officer come forward to depose on this crucial aspect. The concerned Tribunal, shall ensure that the presence of eye-witness is obtained to prove the negligence aspect. Since the impugned Award on this vital aspect is silent, therefore, this case is remanded back to the concerned Tribunal to give an opportunity to the parties to lead evidence on negligence aspect and thereafter, to render the Award in accordance with the law.

5. During the pendency of this appeal, the awarded compensation was deposited by Insurer and out of it, 50% of the compensation has been already released to respondents-*Claimants*. Since without disturbing the disbursal aspect, the impugned Award is set aside and this case is remanded back, therefore, 50% of the deposited amount, be refunded by the Tribunal to Insurer.

6. Let the parties through their counsels appear before the concerned Tribunal on 15th October, 2018 for proceeding further in accordance with the law. The Tribunal shall give opportunity to the parties to lead evidence and thereafter, render the Award expeditiously, preferably within a period of six months from the date the parties appear before it.

7. With aforesaid directions, this appeal and the application are disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 06, 2018

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