(2017) 10 DEL CK 0323

In the Delhi High Court

Case No : MAC. Appeal No. 796 Of 2016

National Insurance Co Ltd — APPELLANT

Vs

Pompy Dutta & Ors — RESPONDENT

Date of Decision : 16-10-2017

Acts Referred:

Motor Vehicle Act, 1988 — Section 166

Citation : (2017) 10 DEL CK 0323

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : L.K.Tyagi, R.K.Bachchan

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. The accident claim case MAC No. 172/2016 was instituted by the first and second respondent (claimants) under Section 166 of the Motor Vehicle

Act, inter alia, against the appellant insurance company seeking compensation on account of death of Barun Datta on 22.01.2011 allegedly due to the

injuries which he had suffered in a motor vehicular accident that had occurred on 06.07.2010 involving negligent driving of car bearing registration No.

DL 3CM-5139, a vehicle owned by the third respondent who is described also as the driver.

2. The Tribunal by judgment dated 01.07.2016 upheld the contentions that the death had occurred due to the injuries suffered in the said accident

rejecting the plea to the contrary raised by the insurance company resisting the case.

3. The appeal at hand questions the finding to above fact pointing out that the evidence shows that having suffered injuries in the accident that had

taken place on 06.07.2010 the victim had remained under treatment as an indoor patient in different medical institutions but eventually was discharged

and had even resumed normal life by joining duty, in the first week of October, 2010. It is pointed out that the claimants have led evidence, by

examining, inter alia, Dr. Kapil PW-1, Gopal Dutt (PW-2) besides the first respondent (claimant), appearing as her own witness (PW-4) mainly relying

on the documents relating to the treatment during July, 2010. There is no clarity in the evidence with regard to the circumstances in which the death

occurred in January 2011, PW-4 in the course of her testimony vaguely claiming that it was due to the injuries suffered in the accident. The Tribunal

has proceeded on the assumption that a person aged about 40 years could not have died due to natural causes and so the death would have occurred

due to the head injuries suffered, such conclusions being based merely on surmises and conjectures rather than any concrete material. The counsel for

the insurance company referred to the copy of the post-mortem examination report dated 23.01.2011 purportedly issued by a Hospital in Noida (U.P.),

inter alia, stating that the cause of death could not be ascertained and that viscera had been preserved, the report whereof was awaited.

4. The counsel for the claimant, on being asked, was unable to explain as to under whose instructions the dead body was sent for post-mortem

examination to the hospital in Noida in January, 2011, particularly against the backdrop of the facts that the victim had been initially discharged from

the hospital after treatment for the injuries suffered in the accident in July, 2010 and having even resumed duties. There is no clarity as to in what

circumstances the death came to be reported to the authorities.

5. After some hearing, the counsel for the claimant fairly admitted that the evidence with regard to the nexus between the injuries suffered and the

death is deficient. While conceding to the prayer in appeal to be allowed and the impugned judgment to be set aside, he requested that the claimants

may be given further opportunity to lead additional evidence so that their claim to compensation be not curtailed.

6. For the foregoing circumstances, the impugned judgment is set aside. The claim case of the first and second respondent is revived for further

inquiry in the course of which the claimants would be entitled to lead additional evidence. Needless to add that the parties that contest will also be given opportunity to lead additional evidence, if any, in rebuttal. The parties are directed to appear before the Tribunal on 16.11.2017.

7. The amount awarded by the tribunal with interest that has been deposited by the insurance company in terms of directions in the order dated

03.10.2016, along with statutory deposit shall be presently refunded.

8. The appeal is disposed of in above terms.

