

\$-8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 15th January, 2015

+

MAC.APP. 31/2011

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Manoj R. Sinha, Advocate

versus

RANJANA DEVI & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. By virtue of this appeal, the Appellant National Insurance Co. Ltd. seeks recovery of the compensation of Rs.5,38,000/- along with interest @ 7.5% per annum awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents no.1 to 3 from Respondent no.5 on the ground that the licence held by Respondent no.4 Ravinder Singh, driver of the offending vehicle was found to be valid for only light motor vehicles (non-transport) although the vehicle involved in the accident *i.e.* the Maruti Car bearing no.HP-01-M-0126 was registered as a taxi.

2. It is urged by the learned counsel for the Appellant that on the strength of the licence held by Respondent no.4, he was not entitled to drive a taxi which is a transport vehicle and therefore, the owner of the insured vehicle committed breach of the terms and conditions of the insurance policy and therefore, the Appellant is entitled to recovery rights. Along with the appeal, an application (CM.APPL 444/2011) has been moved for leading additional evidence to prove that the licence held by the driver(Respondent no.4) was valid only to drive a non-transport vehicle.
3. The accident in question took place on 29.10.2006. The plea that Respondent no.4 was not entitled to drive a transport vehicle as he possessed only a licence to drive an LMV (non-transport) was not taken before the Claims Tribunal. No argument was addressed on behalf of the Appellant Insurance Company (Respondent no.3 before the Claims Tribunal) on the issue of liability of the Insurance Company. No notice was served upon Respondents no.5, owner of the vehicle either to produce the insurance policy or the licence of the driver to find out whether the owner has committed willful and conscious breach of the terms and conditions of the insurance policy.
4. It is well-settled that initially, the onus is on the Insurance Company to prove that there was a willful and conscious breach of the terms and conditions of the insurance policy to entitle it to avoid its liability under insurance. That having not been

done since the beginning, it would be too late after eight years to permit the Appellant to prove all these things without even there being any pleading in this regard before the Claims Tribunal.

5. Thus, the application (CM.APPL 444/2011) for additional evidence cannot be maintained; the same is hereby dismissed.
6. The appeal is devoid of any merit; it is accordingly dismissed.
7. Pending applications stand disposed of.
8. Statutory amount of Rs.25,000/-, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 15, 2015
pst