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

Decided on: 07th May, 2015

+ **MAC.APP. 33/2012**

NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Mr. Manish Kaushik, Advocate
for Mr. K.L. Nandwani,
Advocate

versus

MOHD. HASIM & ORS.

..... Respondents

Through: Mr. S.N. Parashar, Advocate for
Respondent no.1

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 01.09.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.92,500/- was awarded in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident which occurred on 10.01.2008.

2. The only ground raised by the Appellant is that the owner did not possess any permit in respect of vehicle no.DL-1PA-1015 involved in the accident. It is contended that the vehicle involved was a transport vehicle and it was incumbent to have a permit for the same.
3. It is well settled that initial onus to prove that there was willful and conscious breach of the terms and conditions of the insurance policy on the part of the insured is on the Insurance Company. An application (CM.APPL 414/2012) was moved by the Appellant to produce additional evidence in order to prove breach of the terms and conditions of the insurance policy. The application was allowed by Suresh Kait, J. by an order dated 13.05.2014. The Appellant summoned relevant record. However, the same was not produced as Mr. Santosh Kumar, Dealing Assistant from State Transport Authority, Rajpur Road testified that the record has already been weeded out as per rules. Also, no notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 was served upon the insured to produce the permit in respect of the vehicle involved. Thus, it is evident

that the Appellant failed to establish conscious and willful breach of the terms and conditions of the insurance policy.

4. The appeal therefore, has to fail; the same is accordingly dismissed.
5. Pending applications, if any, also stand disposed of.
6. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MAY 07, 2015
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