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

Decided on: 9th February, 2015

\+ **MAC.APP. 67/2012**

BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD
…….Appellant
Through: Mr. A.K. Soni, Advocate

versus

SURAJ KUMAR& ORS. ..... Respondents
Through: Mr. Puneet Aggarwal, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. ***(ORAL)***

1. The only ground raised in the instant appeal is that since breach of terms and conditions of the insurance policy was established, the Appellant ought to have been exonerated or at least recovery rights should have been granted to it.

2. I have gone through the record. Although in para 21 of the judgment, it is stated that the learned counsel for the Appellant Insurance Company has submitted that the driver of the offending vehicle was having only a learner's license and that he was driving a motorcycle without the assistance of a qualified driver, but at the same time, it may be noted that no

notice was given to the owner and driver of the offending vehicle to produce the insurance policy and the driving license respectively. It is well settled that to claim recovery rights, insurer is under obligation to prove that the breach on the part of the insurer was conscious and willful. Since in the present case, the insurer failed to discharge this initial onus as it gave no notice under Order 12 Rule 8 CPC to either the owner or the driver, it would not be entitled to claim recovery rights. The appeal is accordingly dismissed.

3. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

4. Pending applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 09, 2015
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