$-32 to 36

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

Decided on: 10th March, 2015

\+ **MAC.APP. 347/2007**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Pradeep Gaur, Advocate

versus

DHAN LAXMI & ORS. ..... Respondents

Through: None

\+ **MAC.APP. 361/2007**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Pradeep Gaur, Advocate

versus

NAGRAJ & ORS. ..... Respondents

Through: None

\+ **MAC.APP. 362/2007**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Pradeep Gaur, Advocate

versus

P. NAGAMMAL & ORS. ..... Respondents

Through: None

+ **MAC.APP. 363/2007**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Pradeep Gaur, Advocate

versus

DHAN LAXMI & ORS. ..... Respondents

Through: None

+ **MAC.APP. 364/2007**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Pradeep Gaur, Advocate

versus

DHAN LAXMI & 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. These five appeals arise out of the common judgment dated 27.04.2007 whereby compensation was awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) to the legal heirs of two deceased and three injured persons.

2. As per the case set up before the Claims Tribunal, on 05.11.1999 at about 4:40 a.m., deceased A. Raju and Vinayaki and three injured Dhan Laxmi, P. Nagammal and Nagaraj were travelling in a Tata Sumo bearing no.DL-2CG-9849 from Delhi to Varanasi. When the Tata Sumo reached near Gole Dhaba within the jurisdiction of Police Station Majhola, Muradabad, a truck bearing no.HR-37-5607 was found to be going ahead in a zigzag manner. The driver of the truck is claimed to have applied sudden break, as a result of which the driver of Tata Sumo dashed the Tata Sumo against the rear portion of the truck.

3. On appreciation of evidence, the Claims Tribunal found that the accident took place because of the composite negligence of the drivers of the two vehicles. The Claims Tribunal thereafter proceeded to award the compensation and made the Appellant National Insurance Co. Ltd. liable to pay the compensation. Incidentally, National Insurance Co. Ltd. was the insurer of the truck as well as the Tata Sumo. Thus, there was no dispute with regard to the primary liability of the insurer to pay the

compensation.

4. In the instant appeals, a short submission has been raised by the Appellant National Insurance Co. Ltd. with regard to its liability in respect of the negligence on the part of the driver of the truck bearing no.HR-37-5607 which was owned by Amarjeet Kaur.

5. The learned counsel for the Appellant urges that the Insurance Company would not dispute the quantum of compensation in any of the appeals. It only seeks recovery rights in respect of 50% of the compensation paid on behalf of the insured Amarjeet Kaur, who was the owner of the truck bearing no.HR-37-5607 from him.

6. The learned counsel for the Appellant urges that as per the FIR and the case set up before the Claims Tribunal, one Sukha Singh was the driver of the truck bearing no.HR-37-5607 at the time of the accident. His driving licence was got verified by the Appellant Insurance Company and it was found to be fake. It is urged by the learned counsel that on verification of driving licence no.S 1984/KPD/89, it was found that the licence was

issued in favour of one R.Singh, r/o Village Rura, Kanpur Dehat on 03.03.1989 for a medium motor vehicle. On the basis of the said report, the learned counsel urges that the Appellant proved breach of the terms and conditions of the insurance policy on the part of the insured and therefore, the Appellant is entitled to recover the compensation amounts paid from Amarjeet Kaur, Respondent no.4 herein. The learned counsel for the Appellant refers to page no.209 of the Trial Court record. This document appears to be a photocopy of national permit no.61/NP/97 in respect of vehicle no. HR-37-5607. On this very page, there is a photocopy of a driving licence as well. Neither the name nor the number of the driving licence is legible. The Appellant did not issue any notice to Respondent Amarjeet Kaur to produce the driving licence of the driver Sukha Singh. It is well settled that in order to avoid the payment under the insurance policy or seek recovery rights, the insurer is bound to prove that the breach was conscious and willful on the part of the owner/insured. Since no notice was given by the Appellant to the owner to produce the driving licence, it cannot be said that there was any willful or conscious breach of the terms and conditions of the insurance policy on the part of the insured. Moreover, the alleged copy of the driving licence which is available on record is completely illegible cannot be said to be the driving licence of the driver Sukha Singh of the truck. It is also not known as to what is the source of the alleged photocopy.

7. The appeals therefore have to fail; the same are accordingly dismissed.

8. Pending applications stand disposed of.

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

(G.P. MITTAL)
JUDGE

MARCH 10, 2015
pst