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

Date of decision: 18th March, 2015

\+ **MAC.APP. 223/2011**

ORIENTAL INSURANCE COMPANY LTD ..... Appellant
Through: Mr. Shivansh Pandya, Adv. for Mr. Abhishek Kumar, Adv.

versus

GURDAYAL SINGH & ORS ..... Respondents
Through: Nemo.

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

<u>G. P. MITTAL, J.</u> (ORAL)

1. The appeal arise out of the judgment dated 21.01.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.4,41,336/- was awarded in favour of Respondents no.3 to 8 for the death of Raj Dev, who suffered fatal injuries in a motor vehicular accident which occurred on 06.06.2014.

2. By virtue of an appeal, the Appellant seeks exoneration or in the alternative, right to recover the compensation from the insured on the ground that the driving licence held by the driver (Respondent no.2 herein) was fake.

3. It is urged by the learned counsel for the Appellant that a notice under Order XII Rule 8 of the Civil Procedure Code, 1908(Ex.R3W1/1) was served upon the owner (Respondent no.1). However, he failed to produce any driving licence and, therefore, an adverse inference ought to have been drawn against him. It is urged that had the owner been in possession of genuine driving licence or had he seen the same with the driver, he would have definitely come forward to produce the same or would have an explanation in this regard.

4. Admittedly, the copy of the driving licence was available on the Trial Court record. Unless the driving licence was proved to be fake, the same will be considered to be genuine.

5. The Appellant failed to prove that the driving licence held by the driver was found to be fake, by leading any evidence. An application for additional evidence was moved by the Appellant being CM APPL.5098/2011 and the same came to be dismissed by the learned Predecessor vide order dated 06.09.2013.

6. Since the Appellant failed to establish that the driving licence held by the driver was fake, it cannot be said that the Appellant has proved breach of the terms and conditions of the insurance policy let alone willful breach. The Claims Tribunal therefore, rightly declined to

grant any recovery rights to the Appellant.

7. The appeal, therefore, has to fail; the same is accordingly dismissed.

8. Pending applications, if any, also stand disposed of.

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

(G.P. MITTAL)
JUDGE

MARCH 18, 2015
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