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

*Decided on: 26th February, 2015*

\+ **MAC.APP. 425/2013**

ICICI LOMBARD GENERAL INSURANCE CO. LTD.
..... Appellant
Through: Ms. Arpan Wadhawan, Adv.

versus

RAMESH CHANDRA & ORS ..... Respondents
Through: Ms. Amandeep Kaur, Adv. for R-1.
Mr. V.P.S. Raghav, Adv. for R-3.

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

**J U D G M E N T**

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

1. The only ground urged by the learned counsel for the Appellant is that the driving licence held by the driver at the time of the accident was fake and therefore, recovery rights ought to have been granted to the Appellant Insurance Company.

2. It is well settled that the insurer is not only to prove breach of the terms and conditions of the insurance policy on the part of

the insured, but also to prove that breach on the part of the insured was willful and conscious. It is admitted by the learned counsel for the Appellant and was also held by the Motor Accident Claims Tribunal (the Claims Tribunal) that no notice under Order XII Rule 8 of the Code of Civil Procedure, 1908(CPC) was given to the owner or driver of the vehicle to produce the driving licence.

3. The learned counsel urges that since a copy of the driving licence had been seized by the police, there was no need to issue any notice under Order XII Rule 8 CPC. This is not so.

4. As stated earlier, breach on the part of the insured has to be proved to be willful and conscious and therefore, a notice was required to be issued to the owner who might have produced the licence which was shown to him by the driver at the time of his engagement. That having not been done, the Appellant Insurance Company cannot have any grievance if recovery rights have not been granted.

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

dismissed.

6. Statutory amount, if any, deposited shall be refunded to the appellant Insurance Company.

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

**(G.P. MITTAL)**
**JUDGE**

**FEBRUARY 26, 2015**
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