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

Date of decision: 11th February, 2015

\+ **MAC.APP.895/2006**

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Pradeep Gaur, Adv.

versus

SMT. NIRMALA @ NIRMAL & ORS. ..... Respondents
Through: Nemo

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

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

1. This appeal is against the judgment dated 19.08.2006 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby the Appellant National Insurance Company was made liable to pay the compensation of Rs.2,75,000/- to Respondents no.1 and 2 (the Claimants) for the death of a minor child of ten years, who succumbed to the fatal injuries caused in a motor vehicular accident which occurred on 22.09.2002.

2. The only ground raised by the learned counsel for the Appellant is that although the accident was caused by the insured vehicle, a tractor bearing registration no.RJ-21-R-9067, yet its driver and owner Chiranji Lal did not possess a valid and effective licence to drive a tractor. Therefore, even if the Appellant Insurance Company was not exonerated at least recovery rights ought to have been granted to it against Respondent no.3.

3. Learned counsel for the Appellant had taken me through the evidence of R3W1 Harish Chander, Administrative Officer of the Insurance Company who testified that the drive of the offending vehicle involved in the accident, *i.e.* the tractor possessed a valid licence to drive a motorcycle and HTV. However, the licence was not issued for a tractor. Hence, the driver did not possess a licence to drive a tractor.

4. Similarly, Insurance Company produced R3W2 Purshotam Yadav, LDC, Transport Authority, West Zone who stated that the holder of Driving Licence no.C04062001255457 was not entitled to drive a tractor as the licence was not valid to drive the tractor.

5. It is true that if the Insurance Company proves that there is willful and conscious breach of the terms and conditions of the insurance policy, it will be liable to recover the compensation paid to discharge its statutory liability from the insured. However, in the instant case, in the written statement filed by Respondent no.3 (Respondent no.1 before the Claims Tribunal), a specific plea was taken by Respondent no.3 that the accident was not caused by his rash and negligent driving. In para 23(2) another specific plea was taken that the vehicle which is involved in the case is insured with the Appellant Insurance Company and it would be liable to pay the compensation, if any, which is proved by the legal representatives of deceased Raju.

6. In the written statement filed by the Appellant no specific plea was taken that Respondent no.3 did not possess a valid licence to drive a tractor or that the licence was valid only to drive a motor cycle or HTV.

7. No notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 was served upon Respondent no.3 to produce any endorsement or any licence to drive the tractor.

8. In view of this, the Appellant failed to prove that there was any willful or conscious breach of the terms and conditions of the insurance policy on the part of the insured.

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

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

(G.P. MITTAL)
JUDGE

FEBRUARY 11, 2015
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