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

Decided on: 18th March, 2015

\+ **MAC.APP. 545/2011**

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. K.L. Nandwani, Advocate

versus

RUBY RANI & ORS. ..... Respondents
Through: Mr. A.K. Soni, Advocate for Respondent no.9.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant has not taken steps for substitution of legal heirs of deceased Respondent no.8. The appeal against Respondent no.8 abates. Steps have also not been taken for service of Respondent no.7 repeatedly. This appeal was filed in the year 2011. Appeal against Respondent no.7 is dismissed.

2. It is urged by the learned counsel for the Appellant that the Insurance Company proved breach of the terms and conditions of policy and therefore, the Appellant is entitled to recover the

amount of compensation paid from the owner *i.e.* Respondent no.7 herein.

3. Apart from the fact that the appeal has been dismissed against Respondent no.7 by an order passed above, it may be noted that the Appellant did not take any steps to require the owner to produce the driving licence of the driver which might have been seen by him at the time of employing the driver. The insured was not given any notice to produce the original insurance policy or the driving licence of the driver. It is not proved by the Appellant that the copy of the driving licence available on the Trial Court record (mark A) was produced by the insured before the Claims Tribunal. Even no witness was examined or even summoned to prove that the copy of the licence which is marked A was not genuine. The Appellant was content to produce the Deputy Manager who deposed that as per the record, the driving licence was not on the computer line. Testimony of RW-2 is extracted hereunder:

> *"I have brought the policy bearing No.5111605/31/04/01/00002896 issued in the name of Sh. Sarjeet Singh, for the period 3.11.2004 to 2.11.2005 in respect*

of vehicle no.NL 01 D 0189. The same is Ex.R2W1/A. Our company has also appointed the investigator to verify the DL of the driver Mr. Shagir Ahmed. A copy of the investigator namely Gautam Paul alongwith the covering letter issued by our office Calcutta is Ex.R2W1/B. The report of the investigator states that there is no record of the said driving license on computer line as well as in the record book. The recovery right may be given to the Insurance company.

XXX By Sh. M.Alam, counsel for petitioner

Nil. Opportunity given."

4. From the evidence adduced by the Appellant, it cannot be said that the driving licence was fake. All the more, in the absence of any notice to the insured, it cannot be said that there was willful and conscious breach of the terms and conditions of the insurance policy.

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

6. Pending applications also stand disposed of.

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

(G.P. MITTAL)
JUDGE

MARCH 18, 2015
pst