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

Date of decision: 25th March, 2015

\+ **MAC.APP. 379/2010**

ICICI LOMBARD GENERAL INSURANCE CO LTD..... Appellant

Through: Ms. Suman Bagga, Adv.

versus

PITAMBAR YADAV & ORS ..... Respondents

Through: Nemo.

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

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 26.02.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹4,22,400/- was awarded in favour of Respondents no.1 and 2 for the death of Anil Yadav, who suffered fatal injuries in a motor vehicular accident which occurred on 15.07.2007.

2. The only submission made by the learned counsel for the Appellant is that the Appellant, who was insurer of the vehicle involved in the accident has led evidence to prove that there was breach of the terms and conditions of the insurance policy and therefore, the amount of

compensation which has already been paid, must be ordered to be recovered from the insured.

3. The learned counsel for the Appellant relies on the order of this Court dated 04.03.2013 and the report dated 18.04.2012. It is urged that the report clearly establishes that the driving licence in question *i.e.* driving licence No.56/3/2002 was issued in the name of one Raj Kumar son of Teja Ram, resident of Jhumri Tilaiya, District Koderma and not in the name of Anil Yadav, who was driving the vehicle at the time of the accident.

4. It is not the case of the Appellant that this driving licence was produced by the insured. Admittedly, no notice was served upon the insured to produce the driving licence of the driver.

5. It is well settled that it is not each and every breach of the terms and conditions of the insurance policy which will entitle the insurer to recover the compensation paid from the insured. The insurer must prove that the breach on the part of the insured is conscious and willful. Unless the insured was put to notice to produce the driving licence, it cannot be said that the initial onus placed on the insurance company was discharged.

6. Had any notice been issued, the insured might have come forward with some other driving licence or could have stated the circumstances under which the vehicle was entrusted to the driver.

7. In view of this, it cannot be said that the Appellant Insurance Company has proved that there was willful and conscious breach of the terms and conditions of the insurance policy.

8. The Appeal therefore, has to fail; the same is accordingly dismissed.

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

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

(G.P. MITTAL)
JUDGE

MARCH 25, 2015
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