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

Decided on: 20th February, 2015

\+ **MAC.APP. 638/2011**

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. A.K. Soni Raman, Advocate

versus

SHASHI REWARIA & ORS ..... Respondents

Through: Mr. Javed Ahmed, Advocate for Respondents 1 to 5.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The short ground raised in the instant appeal is that the Appellant Oriental Insurance Co Ltd. successfully proved the breach of terms and conditions of the insurance policy and therefore, it ought to have been granted the right to recover the compensation paid from the owner of the vehicle.

2. It is urged by the learned counsel for the Appellant that in spite of notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC), the owner failed to produce the original driving

licence.

3. The question of apportionment of liability was dealt with by the Motor Accident Claims Tribunal(the Claims Tribunal) in para 12 of the impugned judgment, which is extracted hereunder:

> *"12. On the point of liability the counsel for insurance company argued that his client had issued notice Ex.R2W1/2 to respondent nos.1 & 2 to produce permit and DL but despite receipt of notice they did not produce. Permit of the offending vehicle has been filed by petitioner and is Ex.PW-1/8. Insurance company did not get it verified whether it was valid or not. Now it cannot say that respondent nos. 1 & 2 did not produce it. Insurance company is not concerned with the source of the documents but only with document. Accident information report shows that DL of respondent no.1 was taken by the police in possession and is valid from 18.4.2008 to 17.4.2011. The counsel for insurance company argued that the name of the issuing authority is not clear in the DL i.e. it is not legible. Insurance company did not file the DL in order to justify this argument. So, its liability remains intact. Respondent no.1 is principal tortfeasor and respondent nos.2 & 3 are vicariously liable in the capacity of owner and insurer respectively. So, this award is passed in favour of petitioners and against all respondents jointly and severally."*

4. I have the Trial Court record before me. The original driving licence bearing no.8102/MR/04 was seized by the police vide seizure memo dated 09.04.2009(Mark A). The number of the driving licence is clearly legible. All the more, the original driving licence could have been summoned by the police from

the Investigating Officer of the criminal case itself. In view of this, it cannot be said that the Appellant has proved that there was willful breach of the terms and conditions of the insurance policy on the part of the insured.

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

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

FEBRUARY 20, 2015
pst