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

Date of decision: 13th January, 2015

\+ **MAC.APP. 620/2013**

THE ORIENTAL INSURANCE COMPANY LTD...... Appellant
Through: Mr. J.P.N. Shahi, Adv.

versus

KASHMIR SINGH & ORS. ..... Respondents
Through: Nemo.

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

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

1. This appeal is directed against the judgment dated 22.04.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.1,04,478/- was awarded in favour of the first Respondent for having suffered injuries in a motor vehicular accident which occurred on 15.01.1998 at 8:00 a.m.

2. At the time of hearing of the appeal, the sole submission raised by the learned counsel for the Appellant is that there was a breach of the terms and conditions of the insurance policy and therefore, the Appellant was entitled to recover the compensation paid from the insured.

3. Para 13 of the impugned judgment reveals that the driver of the offending vehicle was also challaned under Section 3 read with Section 181 of the Motor Vehicles Act, 1988 for not possessing a valid driving licence. At the same time, it is well settled that the initial

onus is on the Insurance Company to prove that there was conscious and willful breach of the terms and conditions of the policy by the insured.

4. The Appellant neither issued any notice under Order XII Rule 8 CPC to the owner to produce the Insurance Policy to prove the terms and conditions thereof nor required the owner to produce the driving licence of the driver.

5. In the case of *United India Insurance Co. Ltd. v. Lehru & Others* (2003) 3 SCC 338, while relying on *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan & Others* (1987) 2 SCC 654 and *Sohan Lal Passi v. P.Sesh Reddy & Others*, (1996) 5 SCC 21 it was held that the breach on the part of the insured has to be conscious and willful. The Appellant insurance company has failed to prove that there was any breach or that it was willful or conscious.

6. The Appeal is devoid of any merit; the same is accordingly dismissed.

7. The statutory amount of Rs.25,000/- shall be refunded to the Appellant Insurance Company.

8. Pending application also stands disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 13, 2015
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