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

Decided on: 28th May, 2015

\+ **MAC.APP.1103/2012**

UNITED INDIA INSURANCE CO. LTD. ..... Appellant
Through: Ms. Suman Bagga, Advocate

versus

BAHULEYAN AND ORS. ..... Respondents
Through: Mr. Dharmender Arya, Advocate for R-2 & 3.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 06.07.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.3,03,849/- was awarded in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident which occurred on 05.04.2003.

2. There is twin challenge to the judgment. First, the offending

vehicle was a commercial vehicle, yet no permit was produced despite notice issued under Order 12 Rule 8 Civil Procedure Code, 1908(CPC). Thus, the Appellant ought to have been granted recovery right. Second, the award of Counsel's Fee to the extent of Rs.16,000/- directly to the counsel is not in accordance with the Delhi High Court Rules and Orders. Reliance is placed on the judgment of this Court in *ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi and Ors., MAC APP No. 645/2012* decided on 30.07.2012.

3. Respondent no.1 (Claimant) before the Claims Tribunal has not come forward to contest the appeal. The appeal is contested only by Respondents no.2 and 3.

4. By an order dated 20.09.2013, the Appellant Insurance Company was directed to verify the permit, copy of which was handed over to the learned counsel for the Appellant. The permit has been found to be genuine. It is urged by the learned counsel for the Appellant that it was one of the conditions of permit that the vehicle was not to be plied in the area of NCT of Delhi as a transit route for going to other States.

5. It is well settled that the initial onus is on the Insurance Company to prove wilful and conscious breach of the terms and conditions of the insurance policy. No evidence was produced by the Appellant to prove that the vehicle in question was being used as a transit route only. Otherwise also, as per Section 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988 (the Act), to prove the breach of the terms and conditions of the insurance policy either the vehicle should be used without permit or the vehicle should be used for a purpose not allowed by the permit. It is not the case here. Thus, there was no breach of the terms and conditions of the insurance policy. The impugned judgment making the Insurance Company liable to pay the compensation cannot be faulted.

6. As far as award of a sum of Rs.16,000/- towards Counsel's Fee directly to Mr. M.R. Singh Sisodiya, Advocate is concerned, this Court in *ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi and Ors., MAC APP No. 645/2012* decided on 30.07.2012 had gone into the question of granting Counsel's Fee and concluded in Para 32 as under:

"32. To sum up, it is directed:-

(i) The Claims Tribunal is empowered to award costs in a Claim Petition in terms of Section 35 read with Order XXA of the Code.

(ii) The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.

(iii) In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.

(iv) If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not empowered to award any costs unless it forms part of the legal offer.

(v) The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied.''

7. It was thus, concluded that instead of awarding Counsel's Fee, the Claim Petition could have been allowed with costs and Counsel's Fee be paid only in accordance with Rules 1, 1A and 9 of Chapter 16 Vol. I of the Delhi High Court Rules and Orders. At the most, the petition could have been allowed with costs. Thus, award of Counsel's Fee is accordingly set aside.

8. By an order dated 12.10.2012, the entire award amount(less counsel's fee) has already been deposited with the Claims Tribunal and was ordered to be released to the Claimant in terms of the orders passed by the Claims Tribunal.

9. The appeal is disposed of in above terms.

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

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

(G.P. MITTAL)
JUDGE

MAY 28, 2015
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