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

Decided on: 22nd April, 2015

\+ **MAC.APP. 816/2010**

ORIENTAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms.Arpan Wadhawan, Advocate

versus

NARESH KUMAR & ORS

..... Respondents

Through: Mr. Saleem Ahmed, Standing Counsel (Crl.), State of NCT of Delhi with
Mr. Amay Pratap Singh, Adv.
Mr. Asheesh Jain, Adv. with
Mr. K.Shiva Prasad, IAS, Resident Commissioner, State of Punjab & Mr. Darbara Singh, PCS, District Transport Officer, Hoshiarpur, Punjab.

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

J U D G M E N T

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

1. Mr. K.Shiva Prasad, Resident Commissioner, State of Punjab is present and he has tendered apology on behalf of Senior Superintendent of Police (SSP), Hoshiarpur and himself. No further action is called for. Contempt notice to Superintendent of Police, District Hoshiarpur is withdrawn.

2. Statement of CW-1 Mr. Darbara Singh, District Transport Officer, Hoshiarpur, has been recorded.

3. By virtue of this appeal, the Appellant Oriental Insurance Company Ltd. seeks recovery rights in respect of compensation of Rs.1,09,626/- along with interest @ 7.5% per annum paid to Respondent no.1(claimant).

4. It is urged by the learned counsel for the Appellant that a notice was issued to the insured to produce the driving licence of the driver. He failed to produce the same. The driving licence mark CX which was allegedly seized by the police has been proved to be not issued by the concerned Licensing Authority. The Appellant Insurance Company did whatever was in its power and possession to prove the breach of the terms and

conditions of the insurance policy. Thus, the Appellant is entitled to recover the compensation paid to the third party.

5. I have the Trial Court record before me. The Appellant was permitted to lead additional evidence to prove its plea that the licence mark CX was not genuine. District Transport Authority did prove that the licence was not issued by the Licensing Officer, Hoshiarpur. But, at the same time, neither the copy of this notice alleged to have been served by the Appellant upon the insured was placed and proved on record nor R3W1 said a word about the factum of issuance of any notice to the insured to produce the driving licence. Since the Appellant failed to prove that the insured was put to a notice to prove as to how he had committed breach of the terms and conditions of the policy, it cannot be said that there was conscious and willful breach of the terms and conditions of the insurance policy.

6. In view of this, the appeal has to fail; the same is accordingly dismissed.

7. Pending applications stand disposed of.

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

(G.P. MITTAL)
JUDGE

APRIL 22, 2015
pst