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

Date of Decision: 26.04.2016

\+ MAC.APP. 114/2014

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. Rajat Brar, Advocate

versus

SWAMI NATH GUPTA & ORS ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 28.10.2013 in a motor accident claim case [suit no.369/2011(2009)], the Motor Accident Claim Tribunal (the tribunal) while awarding compensation in favour of first to sixth respondents (claimants) on account of death of Swami Nath Gupta in a motor vehicular accident that occurred on 03.08.2008 involving negligent driving of a three wheeler scooter bearing registration No.DL-1RD-4031 (TSR), admittedly insured with the appellant insurance company (insurer), called it upon to satisfy by making the requisite payment, though having upheld its contention about breach of terms and conditions of the policy on the ground that the driver of TSR was not holding a valid and effective driving license and resultantly granting recovery rights against the owner (8^{th} respondent).

2. The insurance company by the appeal at hand submits that instead of recovery rights, it should have been exonerated on account of the finding regarding breach of terms and conditions of the policy. This contention is unmerited as the third party rights cannot be allowed to be defeated. The interest of insurance company is duly protected by grant of recovery rights. [See : *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 and judgment dated 05.10.2010 of this Court in *Shiv Devi & Ors. V. Manoj Kumar & Ors.* (MAC.APP.No.139/2010].

3. The appeal is dismissed. The statutory amount, if deposited, shall be refunded.

R.K. GAUBA
(JUDGE)

APRIL 26, 2016
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