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

Date of Decision: 26th February, 2016

\+ **MAC.APP. 142/2013**

BHARTI AXA GENERAL INSURANCE CO LTD..... Appellant

Through: Mr. Arush Chikersal, Adv.

versus

RAMA NANAD UPPAL AND ORS. ..... Respondents

Through: Mr. Harsh Jaidka, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company is aggrieved with the judgment of Motor Accident Claims Tribunal (the Tribunal) rendered on 20.10.2012 in motor accident claim case No.164/2012 arising out of detailed accident report (DAR) and petition under Section 166 and 140 of Motor Vehicles Act, 1988 (MV Act) whereby compensation in the sum of ₹7,51,187/- was granted with interest at 7.5% per annum in favour of the first respondent herein (claimant) on account of injuries suffered by him in a motor vehicular accident that occurred at 6.15 PM and 05.12.2012 involving two wheeler scooter bearing No.DL 4S BY 1883 (the offending vehicle) concededly insured against third party risk with the appellant (insurer) for the period in question. It may be added that as per the facts proved before the Tribunal,

the offending vehicle is owned by the third respondent herein and was driven by minor son of the said respondent (second respondent herein)

2. While resisting the claim petition, the appellant insurance company had taken the plea that since the vehicle had been allowed to be driven by a minor who was not qualified or competent to drive and was not holding a valid driving license, there has been a fundamental breach of the terms and conditions of the policy and thus it was not liable to indemnify. The Tribunal upheld the contention with regard to the breach of the terms of the policy but called upon the insurance company to pay, *albeit* with liberty to recover the amount thus paid from the insured (the third respondent herein).

3. The insurance company by appeal at hand submits that it should have been fully exonerated. This court finds no substance in the submissions. Reference only needs to be made to the view taken in *United India Insurance Company Ltd. V. Lehru & Ors.* (2003) 3 SCC 338 and *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297.

4. The interest of the insurance company is duly protected with grant of recovery rights. The appeal is devoid of substance and is liable to be dismissed.

5. By order dated 15.02.2013 the insurance company had been directed to deposit the entire awarded amount with up-to-date accrued interest with UCO Bank, Delhi High Court Branch, New Delhi within the period specified. Out of the said deposit, 60% was allowed to be released in favour of the claimant. The balance lying in deposit with up-to-date accrued

interest shall now also be released to the claimant. The Registrar General shall take appropriate steps in this regard.

6. Statutory deposit, if made, shall be refunded.

7. The appeal is disposed of in above terms.

8. Copy of this judgment be given *dasti*.

R.K. GAUBA
(JUDGE)

FEBRUARY 26, 2016
VLD