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

Date of Decision: 10th February, 2016

+ **MAC.APP. 194/2012**

SANDEEP KUMAR AND ANR Appellant
Through **Mr. B M Bharti and Mr. Satish Kumar, Advs.**

versus

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD Respondent
Through **Mr. Rajat Brar, Adv.**

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal under Section 173 of Motor Vehicles Act, 1988 (MV Act) has been brought by the owner (first appellant) and the driver (second appellant) of Rural Transport Vehicle (RTV) bearing registration No. DL IV 7213 (the offending vehicle) which was involved in a motor vehicular accident that occurred at about 8 AM on 25.09.1908 near Malaria Research Centre, Sector 8, Dwarka, New Delhi giving rise to a claim petition (MACT case No.318/2008) being preferred by the legal heirs of Dharmender Kumar Pandey, who died due to injuries consequently suffered. The parents were impleaded as the second and third respondents respectively in the claim petition before the Motor Accident Claims Tribunal (the Tribunal). The offending vehicle was concededly insured against third party risk with

the respondent herein for the relevant period, it having been shown in the array as first respondent before the Tribunal.

2. It may be noted at the outset that the owner (the first appellant) suffered the proceedings *ex-parte* after joining the other appellant in a common written statement. The insurance company having admitted the insurance policy and its liability to indemnify in its terms, however, had contested the claim petition before the Tribunal on the ground there had been breaches of the terms and conditions of the insurance policy.

3. The Tribunal awarded compensation in the sum of Rs.19,91,000/- in favour of the claimants and awarded the said sum with interest at 9% per annum from the date of filing the petition (25.10.2008) till realization. It directed the insurance company (the respondent) to pay the said amount to the claimants.

4. The Tribunal found that the offending vehicle had been driven in violation of the terms and conditions of the permit and therefore, in violation of Section 66 of Motor Vehicle Act and consequently in breach of the terms and conditions of the policy and on that basis granted recovery rights to the insurance company against the appellants herein. It is this direction which is the bone of contention in the appeal at hand.

5. The breach of the conditions of the permit and conditions of the insurance policy which have given rise to the aforementioned direction giving liberty to the insurance company to recover from the insured is essentially on the reason that the driver (second appellant) did not have proper authorization. Learned counsel on both sides refer to the

authorisation as “the badge” issued by the transport authority to the drivers of transport vehicles.

6. It is clear from the discussion on the subject in the impugned judgment that the insurance company conceded that the vehicle was put in use on public road under a valid permit. It was also not disputed that the driver (first appellant) held a valid driving license. It is only the authorization in favour of the said driver to drive the particular vehicle in terms of condition No.34 (iii) and (v) of the permit, the latter referring to the ‘proper authorization card’ in respect of the driver, which has been held to be a breach of the permit conditions and consequently conditions of the policy so as to hold the insurance company entitled to avoid its liability under the insurance policy.

7. The learned counsel for the insurance company in his endeavour to defend the impugned judgment referred to a judgment of a learned Single Judge of this Court in a batch of such appeals led by MAC.APP.No.329/2010 (*Oriental Insurance Company v. Rakesh Kumar*) decided on 29.02.2012. On perusal it is found that the facts and circumstances here are distinguishable. The issue involved in *Rakesh Kumar* (supra) was essentially with regard to the specific restriction in the permit respecting the motor vehicle on the part of the person who would be authorised to drive.

8. In above context the law laid down by the Supreme Court in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 needs to be borne in mind. While summarising the findings on the dispute raised in the said matter, Supreme Court observed (in para 105), *inter alia*, as under :

“(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.”

9. In the case at hand, it has not been shown by the insurance company as to how mere absence of badge or authorisation, could be treated as a fundamental breach so as to allow the insurance company to avoid its contractual or statutory responsibility. There is nothing on record from which it could be inferred that the absence of badge contributed to the negligence leading to the accident.

10. In view of the above, the appeal is allowed. The direction of the Tribunal permitting the insurance company to recover the compensation amount paid to the claimants is set aside.

**R.K. GAUBA
(JUDGE)**

**FEBRUARY 10, 2016
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