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

Date of Decision: 03rd May, 2016

+ **MAC.APP. 220/2013 & CM no.4067/2013**

BHAGWAN

..... Appellant

Through: Mr. Siddharth Pandit & Mr. Narender
Sharma, Advs.

versus

JOGINDER SINGH & ORS.

..... Respondents

Through: Mr. R. C. Mahajan, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 03.12.2012, the motor accident claims tribunal (the tribunal) granted compensation in the sum of ₹3,58,740/- with interest in favour of the first respondent on his claim petition (MACP no.852/08/06) which had been instituted on 03.05.2006 on account of injuries suffered by him in the motor vehicular accident that occurred on 21.01.2006, involving tractor-trolley bearing registration no.HR-13A-9697 admittedly insured with third respondent (the insurer), the vehicle being registered in the name of the appellant (the owner) and driven at the relevant point of time by the second respondent (the driver). Neither the appellant nor the driver contested the

claim case or the issues raised during inquiry. While the appellant had filed written statement denying the factum and manner of the accident pleading that it had occurred due to negligence of the claimant (himself), the driver suffered the proceedings *ex parte*. No evidence was led before the tribunal on their behalf.

2. The insurance company, on the other hand, had pleaded before the tribunal that there was breach of terms and conditions of the insurance policy (Ex.R3W1/A) in as much as the risk of trolley was not covered by the said document, no premium having been paid in such respect. The insurer led evidence by examining Vikram Singh (R3W1), an assistant of the insurance company to prove the policy document as also the issuance of notice under Order 12 Rule-8 of the Code of Civil Procedure, 1908 (CPC) served, amongst others, on the appellant calling upon him to prove relevant documents, particularly the permit and fitness certificate in respect of the vehicle. The tribunal record shows that the said evidence was not resisted or challenged. The fact remains that the basis contention of the insurance company that there was no insurance cover taken out in respect of the trolley which was also in use with the tractor remained unchallenged.

3. Against the above backdrop, the insurance company while being called upon to satisfy the award in favour of the claimant, was granted recovery rights, *inter-alia*, against the appellant.

4. At the hearing, the only ground pressed is against the grant of recovery rights. It is argued that the trolley is not a commercial vehicle and, therefore, no permit was required in its respect. The submission thus made ignores the basic contention of the insurance company. Since the insurance

policy would not cover the trolley, the appeal is unmerited and, therefore, dismissed.

5. The stay against the recovery rights granted during pendency of the appeal is hereby vacated. The statutory deposit, if made by the appellant, shall be payable to the insurance company to partly satisfy its claim under recovery rights qua the appellant.

MAY 03, 2016
ssc

R.K. GAUBA
(JUDGE)

