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

Date of Decision: 22nd February, 2016

+ **MAC.APP. 293/2012**

TEJ RAM

..... Appellant

Through: Mr. S.C. Phogat, Advocate
versus

NATIONAL INSURANCE CO LTD & ORS

..... Respondents

Through: Mr. D.K. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

A very narrow controversy persists and has been pressed for consideration through the appeal at hand brought by the registered owner (the insured) of bus bearing registration no. DL 1PB 3674 (the offending vehicle) which was involved in an accident at 7.20 a.m. on 26-12-2006 (wrongly mentioned as 26-11-2006 in the opening para of the impugned judgment) near red light, Faiz Road causing death of Rekha Goel, aged 23 years, giving rise to cause of action in favour of the claimants (third and fourth respondents herein) to file claim petition under section 166 read with section 140 of Motor Vehicles Act, 1988 (MV Act) before the Motor Accident Claims Tribunal (the tribunal) on 18-01-2007, whereupon it was registered as suit no. 08/07. The claim petition was decided by judgment

dated 19-08-2008 whereby the insurer (the first respondent herein), who impleaded as a party – respondent in the claim petition, was asked to pay the awarded compensation but granted recovery rights against the appellant on the basis of following findings:

“As per the testimonies of R3W1 and R3W2, it has been clearly mentioned that the owner of the bus has to deposit DTC stand bus fee from time to time for the permit to remain valid. He has also mentioned that although the owner of the blueline bus has deposited the fee towards the permit for five years, he had not deposited DTC stand fees and therefore, as per their record no valid permit existed as on 26/12/2006 i.e. a day after the accident. As per record of STA, the permit was not valid on 26/12/2006. It is therefore clear that since as per the record of the Transport Authority, no valid permit existed on the day of accident, therefore, Respondent no. 1 being driver, respondent no. 2 being owners of the offending vehicle and respondent no. 3 being owners of the offending vehicle and respondent no. 3 being insurer of the offending vehicle are jointly and severally liable to pay the amount of compensation to petitioners, however the Insurance Company is entitled to recovery rights and can recover the compensation amount by taking appropriate steps.”

2. During the pendency of the appeal at hand, on permission being granted on application to such affect, the appellant examined Mukesh Kumar (AW1), an official of Delhi Transport Corporation (DTC) to prove receipt (Ex. AW1/1) showing deposit of ₹ 5,000/- by the appellant with DTC on 26-12-2006 towards bus stand fee account in respect of the offending vehicle. In the face of this evidence, learned counsel for the insurer fairly conceded that the ground on which recovery rights had been granted do not now hold good.

3. In view of the above, the impugned judgment is modified. The recovery rights granted to the insurance company are set aside.
4. Statutory deposit, if made, shall be refunded.
5. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 22, 2016
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