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

Date of Decision: 23.05.2016

\+ MAC.APP. 224/2014

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. R.K. Tripathi, Adv.

versus

SMT. PARVINDER KAUR CHAWLA & ANR. ..... Respondents
Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 08.11.2012 a motor vehicular accident occurred involving a motor vehicle described as a Maruti Eeco car bearing registration No. DL 3C BL 9816 (the offending vehicle) resulting in death of Apjit Singh. An accident claim case (petition No. 40/2013) was instituted on 21.05.2013 by the first and second respondents (claimants) in which the appellant insurance company was impleaded on the averment that it had issued an insurance policy against third party risk in respect of the offending vehicle for the period in question at the instance of its registered owner (the fourth respondent herein). It was also alleged that the offending vehicle was driven negligently by the third respondent (driver) which had led to the fatal accident.

2. The tribunal held inquiry and, by judgment dated 07.12.2013, upheld the case of the claimants about death having occurred due to negligent driving of the offending vehicle. It proceeded to grant compensation in the sum of ₹ 11,53,100/- with interest in favour of the claimants directing the insurance company to pay.

3. During the contest before the tribunal, the insurance company had pleaded breach of terms and conditions of the insurance policy on the averment that the driver (the third respondent herein) of the offending vehicle was under the influence of alcohol at the time of the accident. This plea was considered by the tribunal and dealt as under:-

> *"24. Perusal of the MLC of the respondent no.1 reveals that he had consumed liquor to the extent of 141 mg/100 ml. which was beyond the permissible limit of 30 mg/IOOml. meaning thereby that he was under intoxication. As per the traffic rules, a person is not allowed to drive a vehicle under intoxication as it may danger the life of the persons commuting on the road. Since, it is a case of violation of traffic rules, so it is also a case of breach of terms and conditions of the insurance policy. Admittedly, the vehicle was insured and respondent no.1 had a valid and effective licence to drive the vehicle but I keeping in view his conduct he should not be absolved of his liability to pay part compensation to the petitioners. Keeping in view the peculiar facts, I am of the view that the liability of the respondent no.1 to pay compensation to the claimant / petitioners should be to the extent of 30% and that of the respondent no.3 to the extent to 70%. I order accordingly".*

4. By the appeal at hand, the insurance company contends that since the tribunal had returned a finding affirming that the driver was under the influence of alcohol, this constituted a fundamental breach of terms and

conditions of the insurance policy and, therefore, there was no reason it should have been burdened with the liability to pay.

5. Inspite of notice of the appeal raising this issue, neither the third nor the fourth respondent have appeared at the time of final hearing.

6. Having head the learned counsel for the appellant and gone through the tribunal's record, this Court finds merit in the appeal. Once a finding had been returned to the effect that the driver (third respondent) was under the influence of alcohol while driving the vehicle, such fact not only constituting a penal offence under Section 185 of Motor Vehicles Act but also a fundamental breach of terms and conditions of insurance policy, the insurer should have been allowed to recover the amount paid as compensation to the claimants (third party) from the insured/the owner of the vehicle and the driver.

7. In these circumstances, the appeal is allowed, the insurance company is granted right to recover the compensation paid to the claimants from the third and fourth respondents who were held jointly and severally liable.

8. The appeal is disposed of in above terms.

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

R.K. GAUBA
(JUDGE)

MAY 23, 2016
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