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

Date of Decision: 12th May, 2016

\+ **MAC.APP. 335/2013**

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant

Through: Mr. Shoumik Mazumdar, Adv.

versus

USHA DEVI & ORS. ..... Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Raj Kumar son of Ram Chander suffered injuries in a motor vehicular accident that occurred on 29.07.2006 statedly involving negligent driving of the bus bearing registration no.DL-1PB-5758. He filed an accident claim case (case no.512/2008) on 30.02.2007 seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) impleading the appellant/insurance company (the insurer) as one of the party respondents, in addition to the driver and owner of the offending vehicle. It was admitted before the tribunal that the vehicle in question was covered by a third party risk insurance policy issued by the appellant for the period in question.

2. Before inquiry could be concluded, Raj Kumar died, statedly on account of injuries suffered in some other motor vehicular accident. On the application moved by his legal heirs (first to fifth respondents herein), they were substituted in his place and permitted to prosecute the claim case to the logical end. During inquiry, his widow Usha Devi (PW1) appeared as a witness relying on the corresponding record of investigation into the first information report (FIR) no.776/2006 of police station Pushp Vihar (Ex.C-1).

3. The insurer contested, *inter-alia*, on the plea that there was a breach of terms and conditions of the insurance policy as the driving license (Mark-R3W1/X) relied on by the driver Rudal Shah (sixth respondent) upon verification had been found to be fake. Its witness G. N. Manjhi (R3W1), assistant, proved a report to such effect given by its investigator.

4. On conclusion of the inquiry, the tribunal, by judgment dated 10.01.2013 upheld the case about injuries having been suffered by Raj Kumar due to negligent driving of the bus. It awarded compensation in the sum of ₹81,675/- restricting it to the loss to estate and directed the insurer to pay the same with interest. However, plea of breach of terms and conditions of the insurance policy was rejected for the reasons that no evidence had been adduced to prove that the driving license was not genuine.

5. The insurer is in appeal reiterating that negligence has not been proved and that it should have been granted recovery rights in the face of evidence of R3W1.

6. Having heard the learned counsel for the appellant and having gone through the record, this court finds no merit in any of the contentions.

7. The evidence adduced by PW1 clearly shows that the motorcycle, on which Raj Kumar was riding, was hit by the bus from rear side. The negligence on the part of the driver of bus is inherent in the sequence of events proved by evidence. Therefore, finding returned by the tribunal in this regard does not call for any interference.

8. Admittedly, R3W1 himself had not conducted any investigation. The tribunal has taken the correct view that no evidence was brought to prove the plea about the driving license being a fake document.

9. The appeal is, thus, dismissed.

10. The statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

MAY 12, 2016
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HIGH COURT OF DELHI
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