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

Date of Decision: 22nd March, 2016

+ **MAC.APP. 388/2012**

ICICI LOMBARD GENERAL INS. CO. LTD. Appellant

Through: **Ms. Neerja Sachdeva, Adv.**

versus

RAMESH KUMAR &ORS. Respondents

Through: **Mr. S.N. Parashar, Adv.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Shobha, wife of the first respondent and mother of the second respondent, died in a motor vehicular accident that had occurred on 25.12.2007 at about 1.00 p.m. involving truck bearing No. HR 37B 5060 (the offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. The first and second respondents (collectively, the claimants) brought claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 18.1.2008 before the motor accident claims tribunal (the tribunal) which registered it as petition No. 35/2008. Aside from the insurer, the driver and owner respectively of the offending vehicle were also impleaded as respondents.

2. The tribunal held inquiry and on that basis, granted compensation in the sum of ₹ 10,58,304/- with interest calling upon the insurer to pay under the indemnity clause. Noticeably, the insurer had, *inter alia*, pleaded breach of terms and conditions of the insurance policy on the ground that there was no fitness certificate shown to be valid in respect of the offending vehicle for the date of accident. This contention was rejected by the tribunal observing on the basis of document (Ex.RW1/2) that a valid fitness certificate indeed existed.

3. The insurer came up in an appeal raising several contentions including on the question of computation but at the hearing, the learned counsel submitted the said challenge to the computation is not pressed and only the plea for exoneration is insisted upon with reference to the observations in (para no.37 of) the impugned judgment that the owner of the offending vehicle having appeared in the evidence (as RW1) had failed to appear again for his further examination (including cross-examination), and, therefore, his testimony could not be considered. It is submitted that the existence of fitness certificate was, thus, not proved.

4. It may be that the insurer (the owner) did not appear to complete his testimony before the tribunal. But then, the tribunal took care in taking into account the fitness certificate (Ex.RW1/2) which was on record to observe that a valid fitness certificate actually existed which regard to the date of accident. On being asked, the counsel for the insurance company submitted that there has been no verification or investigation done with regard to the genuineness or otherwise of the aforementioned document. With the

insurance company not having taken up the plea that the document referred to by the tribunal was not genuine, there is no substance in the appeal.

5. The appeal is dismissed. The statutory amount shall be refunded.

6. The amount held in deposit in terms of order dated 16.04.2012 shall now be released to the claimants by the Registrar General.

MARCH 22, 2016
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R.K. GAUBA
(JUDGE)

