

\$~6

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

Date of Decision: 1st April, 2016

+ **MAC.APP. 555/2012**

ORIENTAL INSURANCE CO. LTD

..... Appellant
Through Mr. Ravi Sabharwal, Adv.

versus

SYED NAIMUDDIN & ORS

..... Respondent
Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 26.08.2011, the motor accident claims tribunal (tribunal) decided the accident claim case (MACT No.13/2011) which had been preferred on 09.09.2005 by the first to fourth respondents (claimants) for compensation under Section 166 of Motor Vehicles Act, 1988 (MV Act) on account of death of Syed Arshad Ali in a motor vehicular accident that had occurred on 13.05.2005 statedly on account of rash driving of motor vehicle described as container bearing registration No.HR 38H 5716 (the offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer) which had been impleaded as third respondent before the tribunal. The claimants had also impleaded Gul Hassan (fifth respondent before this Court) and Rajender Chugh (sixth

respondent before this Court) as the driver and owner respectively of the offending vehicle. The tribunal awarded compensation in the sum of ₹2,53,000/- with interest and called upon the insurer to satisfy the award, rejecting its defence that there had been a breach of terms and conditions of the insurance policy since the driver (fifth respondent herein) was not holding a valid driving licence on the relevant date.

2. By appeal at hand, the insurance company reiterates the afore-said defence and submits that the second driving licence relied upon by the driver and owner of the offending vehicle, it purportedly having been issued by licence authority Agra (UP) had also been found, upon verification, to be a fake document. This verification of the driving licence purportedly issued by the licensing authority of Agra (UP) has been made after the decision by the tribunal. The insurer submits that the award of compensation was duly satisfied and in the given facts and circumstances it presses only for recovery rights against the driver and owner.

3. It is noted that the fifth and sixth respondents, the driver and owner/insured, who were first and second respondents before the tribunal had opted to suffer the said proceedings.

4. Be that as it may, during the pendency of the appeal, the appellant company had moved application (CM No.9148/2012) invoking the provision contained in Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) praying for liberty to adduce additional evidence, particularly the report of the investigator dated 15.02.2012. The said application was considered by a learned single judge of this Court then in seisin of the matter and, by order dated 18.09.2015, the prayer was declined and the application was dismissed with observations to the following effect :

“The grounds on which the Insurance Company wants to lead additional evidence when tested on the anvil of judicial principles referred to above, the only conclusion that can be drawn is that it is a case of serious lapse on the part of the Insurance Company in not taking required steps at the relevant stage. It is not the case of the Insurance Company that driving licence issued by Agra Transport Authority has surfaced on record after passing of the award. The award was passed on 26.08.2011. After passing of the award investigator was appointed who gave his report dated 15.02.2012. The appeal has been filed in May, 2012. Thus, the Insurance Company despite coming to know about the fact of one licence issued from Agra Transport Authority failed to wake up at the appropriate stage. The Insurance Company cannot be permitted to prove the report of investigator by way of additional evidence.”

5. In the face of the above decision, the view taken by the tribunal in the matter cannot be upturned. The appeal with pending application is, therefore, dismissed.
6. Statutory amount, if deposited shall be refunded.

**R.K. GAUBA
(JUDGE)**

**APRIL 01, 2016
VLD**