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

Date of Decision: 10th March, 2016

\+ **MAC.APP. 522/2012 & CM Nos. 8787-88/2012**

HDFC ERGO GENERAL INS. COMPANY LTD. ..... Appellant
Through: Ms. Neerja Sachdeva, Adv.

versus

LOLAS KUNJUR & ORS ..... Respondents
Through: None.

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Though the appeal filed by the insurance company against the judgment dated 19.07.2011 of the motor accident claims tribunal (the tribunal) in accident claim case registered as Suit No. 577/2010 raised a number of issues, at the hearing, the learned counsel for the insurance company (appellant) presses it only to seek right to recover the amount of compensation awarded by the tribunal in favour of the first and second respondents herein (claimants) from the fourth respondent (registered owner/insured) on the plea that the detailed accident report (DAR) submitted by the police before the tribunal had indicated that the third respondent (driver of the offending vehicle) was not holding a valid and effective driving license at the relevant point of time.

2. Having heard the learned counsel and having gone through the tribunal's record, it is noted that the tribunal by the impugned judgment

granted compensation in the sum of Rs. 3,78,000/- with interest @ 9% in favour of the claimants on account of death of Milan Kunjur in motor vehicular accident that had occurred at about 7.00 a.m. involving motor vehicle described as Canter UP 16E 0565 concededly insured against third party risk with the insurance company. The insurance company (appellant) had been impleaded as party respondent in the claim case, in addition to driver and owner/insured of the offending vehicle. Inspite of notice and opportunity given, the insurance company did not file any written statement and consequently its defence was struck off. In the given facts and circumstances, the insurance company, failed to put up any contest before the tribunal to the claim petition. No defences of the kind sought to be agitated now were raised. Even after the DAR had been filed, no plea was taken up before the tribunal with regard to the willful breach of the terms and conditions of the insurance policy.

3. In these circumstances, the plea raised at this belated stage cannot be accepted. The appeal is, thus, liable to be dismissed.

4. The insurance company is now directed to discharge its responsibility under the impugned judgment unless already done.

5. The statutory amount shall be refunded by the Registrar General, after confirming that the impugned award has been satisfied.

6. The appeal is dismissed.

R.K. GAUBA
(JUDGE)

MARCH 10, 2016/nk