$~R-45

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

Date of Decision: 1st April, 2016

\+ **MAC.APP. 436/2007**

DAVINDER KUMAR ARORA ..... Appellant

Through: None.

versus

RAMESHWAR PRASAD & ORS. ..... Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 18.11.2006, the motor accident claims tribunal (tribunal) while deciding the accident claim case (suit No.131/2005) preferred by the first to fourth respondents herein (the claimants) on 29.08.2005 awarded compensation in the sum of ₹5,54,000/- on account of death of Ram Ratan in a motor vehicular accident that had occurred on 26.06.2005 involving motor vehicle described as bus bearing No.DL 1PB 4949 (offending vehicle) admittedly insured against third party risk with the sixth respondent herein (the insurer) and held that there was a breach of terms and conditions of the insurance policy as the driver of the offending vehicle Bhajan Singh (the fifth respondent herein) was not holding a valid badge issued by the motor licensing officer. On this basis, while the insurer

was directed to satisfy the award, it was granted right to recover the amount thus paid, as compensation from the appellant (the registered owner of the bus). It is the said recovery right which is challenged through the appeal at hand.

2. By order dated 24.07.2007, notice was issued restricted to the sixth respondent (the insurer), with stay against operation of the impugned order. The appeal was admitted by order dated 13.05.2009 and has remained pending ever since. When the matter was called out earlier no one appeared for either side. The situation remains same even today.

3. On perusal, it is found that the insurer had also raised the plea that the driving license of the fifth respondent had been cancelled on 31.12.2005. This, however, will not be of any effect inasmuch as the driving license was valid for the period 13.01.2004 to 12.01.2007 which covers the date of accident. The cancellation of the driving license later will be inconsequential.

4. It is correct that in terms of the rules in force under the Motor Vehicles Act, 1988, the driver of a commercial vehicle of such nature as is the case at hand is required to carry a badge issued by the licensing authority authorizing him to be in such capacity. But while non-possession of a badge may undoubtedly entail consequences under the said legislation or rules framed thereunder, it can hardly be termed as a breach which was fundamental to the terms and conditions of the policy so as to support plea of insurer for exoneration (*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297).

5. In above view, the appeal must be allowed. It is held that the insurer (sixth respondent) was liable to indemnify the appellant under the insurance policy taken out by him in respect of the offending vehicle for the period in question. The directions for recovery rights are set aside.

6. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 01, 2016
VLD

HIGH COURT OF DELHI
सत्यमेव जयते