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

Date of Decision: 03rd May, 2016

\+ **MAC.APP. 551/2013**

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through Mr. P Acharya, Adv.

versus

RAJESH KUMAR & ORS. ..... Respondent
Through Mr. Navneet Prabhakar, Adv. for R-1 to 3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 06.05.2013, in accident claim case (MACT No.84/09/13), the motor accident claims tribunal (tribunal) awarded compensation in the sum of ₹6,58,553/- with interest in favour of the claimants (first to third respondents) on account of death of Rajni in motor vehicular accident that had occurred on 06.06.2009 due to negligent driving of truck bearing No.HR 69A 8091 (offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. In the claim case, Sombir (fourth respondent) and Chhote Lal (fifth respondent) were also impleaded as party respondents on the averments that they are the driver and owner respectively of the offending vehicle. Though by their written statements they denied the

case of the claimants taking the position that the accident had occurred due to negligence on the part of the motorcycle rider, on the pillion of which the deceased was travelling, no evidence was led by them at the inquiry.

2. The insurance company contested by leading evidence through Kulwant Singh (R3W1), clerk from the office of Road Transport Authority (RTA), Sonepat, Haryana to prove copy of the permit (Ex.R3W1/A) in respect of the offending vehicle). The said document proved by the witness. (examined by the insurer) would show that the vehicle did not have a valid permit for Delhi beyond 01.11.2008. On this, the insurer pleaded before the tribunal that there was a breach of terms and conditions of the insurance policy.

3. The tribunal, however, side-stepped the issue by observing vaguely that the insurance company did not have any statutory defence to offer and, thus, held it liable to satisfy the award.

4. By the appeal at hand, the insurance company reiterates its case about breach of terms and conditions of the insurance policy. The owner and driver of the offending vehicle (fourth and fifth respondents) in spite of notice, though having appeared on some of the dates, have not appeared today either in person or their counsel to make any submissions. No document has been filed till date on their behalf to show in any manner that the offending vehicle had a valid permit for Delhi for the above date.

5. From the above facts and circumstances, the insurance company has brought home its case about breach of terms and conditions of the insurance policy and deserves to be granted recovery rights against the fourth and fifth

respondents. The same are hereby granted. The insurance company may take out appropriate proceedings before the tribunal to enforce the said recovery rights.

6. By order dated 02.07.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General from which 80% was allowed to be released to the claimants. The balance kept in deposit shall also now be released to the claimants in terms of above directions.

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

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 03, 2016
VLD