$~11

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

**Date of Decision: 1st February, 2016**

\+ **MAC.APP. 565/2013**

HDFC ERGO GEN. INSURANCE CO. LTD...... Appellant

Through: Ms. Suman Bagga & Mr. Siddhant Jaiswal & Mr. Pankaj Gupta, Advs.

versus

JAMEELA BEGUM & ORS. ..... Respondents

Through Mr. Manoj Kumar Yadav, Advs. for R-3 & 4.

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

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. In the inquiry arising out of claim petition under Sections 166 and 140 of Motor Vehicles Act presented by the first and second respondents herein, registered as Suit No. 63/11 by the motor accident claims tribunal (the tribunal) the insurance company (the third respondent before the tribunal) in appeal though admitting the insurance policy in respect of the offending vehicle bearing registration No. HR 47 B 6778 covering the relevant period took the defence that there was a breach of policy conditions inasmuch as the driver (the third respondent herein) did not have a valid and effective driving license. Its contention was rejected by the tribunal even though it had led evidence to affirm the said defence through Mr. Abhishek Kushwaha, R3W1, Assistant Manager and Mr. Hari Om, R3W2 the investigating officer.

2. The insurance company feeling aggrieved has come up to this Court questioning the propriety and correctness of the reasoning on the basis of which the tribunal rejected the aforementioned contention holding it to have failed to establish deliberate or wilful breach of the insurance policy, even though no positive evidence was adduced by the driver (the third respondent herein) or the insurer (the fourth respondent herein) to prove that the former (the third respondent) did have a valid driving license.

3. The notice of the appeal at hand was issued by order 05.07.2013 only to the third and fourth respondents who have appeared, through counsel, to contest. During the hearing on the appeal, the learned counsel representing the third and fourth respondents, as aforesaid, submitted that the driver (the third respondent) did have a valid driving license but for some reasons evidence to this effect could not be brought on record during the inquiry. Request is now made for fresh opportunity to be given to prove the said fact. It is argued that the reports and evidence of R3W1 and R3W2 to the effect that the driving license shown to the investigating officer of the police case was found to be forged was based on insufficient inquiry.

4. Against the above backdrop, both sides fairly agree through their counsel that the inquiry as to whether the driver was holding a valid and effective driving license be remitted for fresh opportunity particularly to the driver and owner of the vehicle to be given for bringing in positive evidence in affirmation of the aforementioned claim, and thereafter the question be determined afresh. The insurance company submits through counsel that it has already satisfied the award in favour of the claimants. It is agreed by both sides that in case the driver and owner fail to prove

that the former was holding a valid driving license, the insurance company would be entitled to recovery rights.

5. Thus, the impugned judgment, to the extent it negatived the claim of the insurance to above effect is set aside. The short issue, as mentioned above is remitted to the tribunal for fresh inquiry and adjudication. Given the position taken by the third and fourth respondents herein, the prime burden of proving the existence of a valid and effective driving license would be that of said parties, i.e. the third and fourth respondents.

6. The parties are directed to appear before the tribunal for aforementioned purposes on 29th March, 2016.

7. Needless to add, given the narrow area of controversy, the tribunal will hold expeditious proceedings and make all endeavour that this inquiry be completed within four months of this order, as above.

8. Statutory deposit, if made, shall be refunded.

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

**FEBRUARY 01, 2016**
nk