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

Date of Decision: 29th April, 2016

+ **MAC.APP. 535/2014**

THE ORIENTAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. R. C. Mahajan, Adv.

versus

VINAY KUMAR & ORS

..... Respondents

Through: Mr. Chandan Malik, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By the appeal at hand, the insurance company reiterates its defence that there was breach of terms and conditions of the insurance policy respecting the offending vehicle (car) bearing registration no.DL-1YA-2114) for the reason the driver (third respondent) was not holding a valid or effective driving license at the time of accident that occurred on 28.10.2007. The tribunal had granted compensation on the basis of claim petition (suit no.297/2011/2008) in favour of the first respondent (the claimant) for injuries suffered by him in the said accident. It appears from the tribunal's record that the insurance company had led evidence by examining Sanjay Kumar (R3W1) and Vikram Singh (R3W2), official from the licensing

authority and an employee of the insurance company respectively, to prove that the license held by the driver was valid for light motor vehicle (LMV) (non-transport). Its grievance in the appeal against the impugned judgment of the tribunal dated 26.02.2014 essentially is that the plea and the evidence were ignored and not adjudicated on the erroneous assumption (in para 7) that no evidence had been led by it.

2. The submission that the tribunal did not consider the plea and also made erroneous observation about the evidence are correct. But, the fact remains that the offending vehicle, light motor vehicle, plied as taxi, was driven by third respondent who was concededly in possession of a driving license. While it may be that the driving license authorized him to drive only a non-transport LMV, this cannot be treated as a functional breach of terms and conditions of the policy [*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297].

3. In above view, the appeal is unmerited and therefore dismissed.

4. The statutory amount, if deposited, shall be refunded.

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

APRIL 29, 2016
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