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

Date of Decision: 02nd May, 2016

+ **MAC.APP. 465/2007**

THE ORIENTAL INSURANCE CO.LTD. Appellant

Through: Mr. Shoumik Mazumdar & Mr.
Pankaj Seth, Adv.

versus

KISMATI AND ORS. Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. While resisting the accident claim case (suit_no.151/2006) brought by first to fourth respondents (the claimants) before the motor accident claims tribunal (the tribunal) on 12.08.2005, the appellant/insurance company (the insurer) concededly having issued third party risk insurance policy in respect of the offending vehicle (bearing registration no.DL-1VA-3265) in favour of the fifth respondent (registered owner of the offending vehicle) took the plea that there was breach of terms and conditions of the insurance policy as the driving license (no.526/2001) relied upon as one held by the driver of the offending vehicle, Mohd. Akhtar Ali (sixth respondent), was a fake document and, thus, it was not liable to be called upon to indemnify. While

awarding the compensation in favour of the claimants by judgment dated 11.05.2007, the tribunal directed the insurance company to pay and rejected its plea for exoneration.

2. By appeal at hand, the insurer only presses for recovery rights against the owner reiterating its plea for breach of terms and conditions of the insurance policy. Having heard the learned counsel for the insurer, this court finds the appeal to be unmerited.

3. The tribunal accepted the evidence of the insurer (fifth respondent) to the effect that the driver had been engaged after the license had been checked. In rejecting the contention of willful breach insurance policy, the tribunal has followed the view taken by the Supreme Court in *United India Insurance Company Ltd. V. Lehu & Ors.* (2003 3 SCC 338. The view taken by the tribunal cannot be faulted. There is no evidence showing that the owner had been guilty of due diligence.

4. The appeal is dismissed.

R.K. GAUBA
(JUDGE)

MAY 02, 2016
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