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

Date of Decision: 05th May, 2016

\+ **MAC.APP. 621/2013**

UNITED INDIA INSURANCE CO LTD ..... Appellant
Through Mr. L K Tyagi, Adv.

versus

KRISHAN & ORS ..... Respondent
Through Ms. Latika Chaudhry, Adv. for Ms. Avnish Ahalwat, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 22.04.2013 in accident claim case (44/DAR/11) the motor accident claims tribunal (tribunal) awarded compensation in favour of the first respondent on account of injuries suffered by him in an accident that occurred on 11.01.2011 involving bus bearing registration No.DL 1PC 7306 of Delhi Transport Corporation (DTC), admittedly insured against third party risk with the appellant insurance company (insurer) and while calling upon the latter to satisfy the award under the indemnity clause, declined to grant recovery rights even though evidence had been led to show that the licence of the driver of the offending vehicle had been found to be fake. The insurance company, by the appeal at hand, questions the correctness of the said view taken by the tribunal.

2. The following observations of the tribunal only need to be noted:-

> *"57. However, Depot Manager of DTC had entered in the witness box and had stated that the driver had given an affidavit at the time of his employment that his driving license is valid. He had also stated that driving skill of driver was also tested before employing him as a driver and he was also given four weeks special driving training so that he can drive DTC Buses safely.*
> *58. Though in cross-examination, he admitted that DTC is required to verify the genuineness of driving license within three months but he also deposed that the process was initiated within time but it takes more time for its verification.*
> *59. Considering the fact that the DTC had believed the driving license of the driver to be genuine as driver had given an affidavit that the driving license is genuine and considering that the DTC had taken driving test of Respondent No. 1 before employing him as a driver and had also imparted four weeks special training, it cannot be said that DTC has committed any breach of terms and conditions of policy deliberately and willfully."*

3. This Court agrees with the submission of the counsel for DTC that merely because more time than usual was taken in verifying the genuineness of the document presented on oath by the driver at the time of engagement, a case of willful default is not made out. The view taken by the tribunal is correct [*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 & *United India Insurance Company Ltd. V. Lehru & Ors.* (2003 3 SCC 338]

4. The appeal is devoid of substance and therefore dismissed.

5. The statutory amount shall be refunded.

R.K. GAUBA
(JUDGE)

MAY 05, 2016/VLD