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

Date of Decision: 25.05.2016

+ MAC.APP. 665/2013

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Advocate

versus

DEVI DEEN & ORS. Respondents

Through: None

+ MAC.APP. 666/2013

NEW INDIA ASSURANCE CO. LTD Appellant

Through: Mr. Sameer Nandwani, Advocate

versus

LALTA PRASAD & ORS. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 09.03.2008, at about 9.00 a.m., Devi Deen was driving a motor cycle bearing registration no.DL-9SN-1710 (motor cycle) with Lalta Prasad

riding on the pillion. In the area of Rath Banwari Raod, the motor cycle was involved in a collision with a truck bearing registration no.UP-78N-8757 (truck) which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. Both Devi Deen and Lalta Prasad suffered injuries. They filed accident claim cases (MACT 172-173/12/08) on 04.07.2008 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act). In the said claim cases, the appellant insurance company was impleaded as a party, in addition to the driver and legal heirs of the owner of the offending vehicle.

2. The cases were contested and, after inquiry, by a common judgment dated 02.05.2013, the Motor Accident Claims Tribunal (tribunal) held that the two claimants had suffered injuries due to negligent driving of the truck. This finding has attained finality as it was not challenged further. By the said judgment, the tribunal awarded compensation in the sum of Rs.1,35,576/- and Rs.1,04,600/- respectively with interest in favour of the two claimants.

3. The insurance company had pleaded before the tribunal that there was a breach of the terms and conditions of the insurance policy as the truck was taken out on road without a valid permit. This contention was, however, rejected and the insurance company was called upon to satisfy the award in these cases.

4. By the appeals at hand, the insurance company presses the issue only of recovery rights, its contention being that it had examined Prem Singh, Dy. Manager (R3W1) to prove that, as per his information, the truck was plied

on the road without a valid permit and that, inspite of notice under Order 12 Rule 8 of the code of Civil Procedure, 1908 (CPC), as per copy (Ex. R3W1/2) sent as per postal receipt (Ex. R3W1/3), the owner of the offending vehicle had neither given any details of the permit nor produced any permit. Noticeably, neither the driver nor the owner of the offending vehicle participated in the inquiry. As inspite of notice they would not appear, they were set exparte. They have not appeared even at the hearing on the appeals inspite of notice.

5. The tribunal rejected the plea of the insurance company observing that mere issuance of a notice under Order 12 rule 8 CPC was not sufficient and that it should have summoned a witness from the office of the transport authority to prove that there was no valid permit in existence. This approach cannot be sustained. The insurer did not have any particulars of the permit. It could not be expected to go into a blind search for the permit. The insurance company had done what it could by calling upon the owner formally to produce the permit or share its particulars. There being no response from the owner to the said notice under Order 12 Rule 8 CPC, and the owner not having participated in the inquiry, or even before this court, it has to be assumed that no valid permit actually existed.

6. Thus, the appeals are allowed. The contention of the insurance company about breach of the terms and conditions of the insurance policy are upheld. It is granted recovery rights against the owner and driver of the offending vehicle. For enforcing the same, it may take out appropriate proceedings before the tribunal.

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

8. The appeals are disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 25, 2016

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