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

Date of Decision: 16th February, 2016

\+ **MAC APP. 705/2011 & CM APPL.14180/2011**

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr.(appearance not given).

versus

SHAHZAD KHAN & ORS ..... Respondents

Through: Mr. Mukesh Kr. Dral, Ms. Poonam S. Raswant & Mr. Khalid Rana, Advs. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 28.02.2011 in claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (the MV Act), brought by the first respondent, registered as suit no.405/2008, the motor accident claims tribunal (the tribunal) awarded compensation in his favour in the sum of ₹1,99,740/- with interest at the rate of seven & half percent per annum (7.5%), on account of injuries suffered by him in a motor vehicular accident that had occurred on 06:00 AM on 27.08.2008 involving bus bearing registration no.RJ-07PA-1347 (the offending vehicle) which concededly was insured with the appellant/insurance company.

2. The tribunal had directed the aforesaid compensation to be paid by the insurance company by depositing in the court on the grounds that it was liable to indemnify the insured (third respondent herein) who was held vicariously liable to compensate. Before the tribunal, the insurance company had taken the plea that there was breach of terms and conditions of the policy in as much as the driver of the offending vehicle (second respondent) was not holding a valid driving license at the time of accident. This contention was not considered in the impugned judgment. The insurance company, thus, moved an application for review under Section 114 of the Code of Civil Procedure, 1908 (CPC) which was considered and decided by order dated 07.04.2011 upholding the plea denying to absolve it but granting it recovery rights against the insured.

3. By the appeal at hand, the insurance company raises the short issue that instead of being called upon to pay and recover, it should have been fully exonerated. Having regard to the admitted fact that the offending vehicle was covered by an insurance policy against third party risk, the contention of the insurance company in the appeal cannot be accepted. There is no reason why the claim of third party be denied. The learned tribunal has taken an appropriate view on the subject [*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297]. The appeal is, therefore, dismissed.

4. The statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

FEBRUARY 16, 2016
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