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

Date of Decision: 28th April, 2016

+ **MAC.APP. 761/2013**

SHRI SHYAM CORPORATE

..... Appellant

Through: Mr. Sunil Dalal & Mr. Jai Prakash,
Adv.

versus

KANHAIYA LAL & ANR

..... Respondents

Through: Mr. Pankaj Gupta, Adv. for Ms.
Suman Bagga, Adv. for R-2.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant is the registered owner of offending vehicle (DL-1YC-8801), the negligent driving of which resulted in a motor vehicular accident causing injuries on the person of the first respondent (the claimant) giving rise to a cause of action to claim compensation under Section 166 of the Motor Vehicles Act, 1988 (the MV Act) which was prosecuted through an accident claim before the tribunal, decided by judgment dated 16.05.2013. The tribunal returned a finding about negligent driving and awarded compensation in the sum of ₹2,28,215/- with interest in favour of the

claimant and directed the second respondent (the insurer) to pay the compensation though accepting its plea implicitly that there was breach of terms and conditions of the policy for the reason the driver was authorized to drive only light motor vehicle (non-transport), the vehicle herein being a light commercial vehicle and, thus, recovery rights against the appellant were granted.

2. Having heard both sides and having gone the record, this court finds that appeal must be allowed.

3. Absence of authorization particularly one for a commercial vehicle could not have resulted in finding of breach or fundamental terms and conditions of the policy in as much as this is not shown to have added to any cause leading to the accident [*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297].

4. The appeal is allowed. The recovery rights are set aside.

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

R.K. GAUBA
(JUDGE)

APRIL 28, 2016
SSC