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

% **Date of Decision: 07<sup>th</sup> September, 2016**

+ MAC.APP. 1013/2012 & CM No.16001/2012

RAJOURI GARDEN GAS SERVICES ..... Appellant

Through Mr. B.K. Singh, Adv.

versus

SHABNAM & ORS ..... Respondents

Through Mr. Sameer Nandwani, Adv. for R-6

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**JUDGMENT (ORAL)**

1. The appellant has challenged the recovery rights granted to respondent no.6 to recover the award amount from the appellant.
2. The offending vehicle bearing No.DL-1GB-4598 was being driven by respondent no.7 at the time of the accident on 9<sup>th</sup> February, 2010. The offending vehicle had a valid permit Ex.R2W1/1 whereby the vehicle was authorized to carry petrol and petroleum goods. The driver of the offending vehicle was holding a valid driving licence whereby he was authorized to drive LMV, MGW and HGV.
3. The Claims Tribunal observed that there was no endorsement on the driving licence to drive a motor vehicle carrying petrol or petroleum goods.
4. Learned counsel for the appellant submits that the offending vehicle was neither carrying petrol nor petroleum goods at the time of the accident. It is submitted that the offending vehicle was carrying empty gas cylinders at the time of the accident and the driver of the offending vehicle was authorized to drive the truck carrying empty gas cylinders.

5. There is merit in the contention of learned counsel for the appellant. Considering that the offending vehicle was not carrying petrol or petroleum products at the time of the accident and the driver of the offending vehicle had a valid driving licence to drive heavy goods vehicle, there is no violation of the terms and conditions of the policy.

6. The appeal is allowed and the impugned award dated 29<sup>th</sup> May, 2012 is set aside insofar as the Claims Tribunal has awarded recovery rights to respondent No.6 to recover the award amount from the appellant.

7. The appellant has deposited 50% of the award amount in terms of order dated 12<sup>th</sup> September, 2012 which shall be refunded back to the appellant along with interest thereon. The statutory amount be also refunded back to the appellant.

**J.R. MIDHA, J.**

**SEPTEMBER 07, 2016**

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