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

Date of Decision: 5th April, 2016

\+ **MAC.APP. 1026/2012**

NEW INDAI ASSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

GANGA DEVI & ORS ..... Respondent

Through: Mr. Anuj Soni, Adv. for R-3

\+ **MAC.APP. 1028/2012**

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

DAN SINGH & ORS ..... Respondent

Through: Mr. Anuj Soni, Adv. for R-3

\+ **MAC.APP. 1030/2012**

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

KHEMA DEVI & ORS ..... Respondent

Through: Mr. Anuj soni, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. These three appeals arise out of common judgment of motor accident claims tribunal (tribunal) rendered on 08.06.2012 whereby the accident claim cases (suit Nos.225/08, 353/04 and 352/04) of the respective first respondents of these three appeals were decided and while compensation was awarded in their favour for the injuries suffered in a motor vehicular accident that had occurred on 08.03.2004 involving Santro car No.DL 4CM 9206 (the offending vehicle) admittedly insured with the appellant insurance company (insurer), it was asked to satisfy the awards, its plea for exoneration on the ground that the driver of the offending vehicle (the second respondent) was not holding a valid or effective driving license at the time of the accident being rejected.

2. By the appeals at hand, the insurer insists that in the facts and circumstances proved wherein the driving license of the second respondent had expired on 11.01.2004, it having been renewed on 17.03.2004, the accident having occurred on 08.03.2004, its plea about breach of terms and conditions of the insurance policy deserved to be accepted. It, thus, presses for recovery rights against the owner/insured of the offending vehicle (since deceased, now represented by his legal heirs).

3. Having heard arguments and gone through the record, it is found that the driving license had indeed expired on 11.01.2004. The driver, however, had applied for renewal on 01.03.2004, receipt of payment of fee whereof was proved during the inquiry. Noticeably, Babu Lal (R3W2), an official of

the concerned transport authority also conceded during cross-examination that the second respondent was not disqualified for driving a motor vehicle as on the date of accident.

4. The insurer refers to Section 15 of the Motor Vehicles Act, 1988 (MV Act) to point out that driving license had to be renewed within a period of 30 days of its expiry. It, thus, contends that there was no valid or effective driving license in possession of the driver and this, as per submissions, constitutes a breach of the terms and conditions of the policy within the meaning of Section 149(2)(a)(ii) of MV Act. It refers to *Malla Prakash Rao v. Malla Janki Devi* (2004) SCC 343 to contend that the owner/insured of the offending vehicle cannot seek to be indemnified as there was a breach of terms and conditions of the policy.

5. In the considered view of this Court, the plea of the insurer must be rejected by reference to the following observations of the Supreme Court in [para 110 (vi) of] the judgment in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297:

> *"(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act."*

6. The rule of the main purpose indicates that the breach mentioned

above cannot be treated as fundamental breach of the terms and conditions of the policy. The fact that the driver's license had expired cannot be said to have contributed to the cause for accident.

7. In above view, the appeals must fail and are accordingly dismissed.

R.K. GAUBA
(JUDGE)

APRIL 05, 2016
VLD