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

Date of Decision: 30.05.2016

+ **MAC.APP. 27/2008 & CM No.2998/2010**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

..... Appellant
Through Mr. Pankaj Seth, Adv. with Mr.
Shoumik Mazumdar, Adv.

versus

VIMAL DEVI AND ORS.

Through None

..... Respondent

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 10.09.2007, passed on the file of the claim petition (No.202/05) of the first respondent (claimant) granting compensation in her favour for the death of Yogesh Kumar in motor vehicular accident that occurred on 22.02.2002 on account of negligent driving of the motorcycle DL 5SQ 1060 (the offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer), the plea of the latter about breach of terms and conditions of the insurance policy was accepted and it was granted recovery rights against insured (third respondent herein), the owner of the offending vehicle, in the face of finding that the driver (the

second respondent) was not holding a valid or effective driving license on the relevant date.

2. By the appeal at hand, the insurance company only pressed for total exoneration. This plea must be rejected. The third party rights cannot be defeated. The interest of the insurance company is duly protected by grant of the recovery rights. [*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 and *United India Insurance Company Ltd. V. Lehu & Ors.* (2003 3 SCC 338)]

3. By order dated 15.01.2008, the insurance company had been directed to deposit the entire awarded amount with the Registrar General within the period specified. By order dated 12.03.2013, 80% of the awarded amount was released in favour of the claimants. The balance shall also now be released to the claimant. The insurer is at liberty to enforce the recovery rights by appropriate proceedings before the tribunal.

4. Statutory deposit, if made, shall be refunded.

5. The appeal is disposed of in above terms.

6. A copy of this judgment shall be sent by the registry to the claimants and the insurance company.

(R.K. GAUBA)
JUDGE

MAY 30, 2016
VLD