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

**Date of Decision: 12th May, 2016**

\+ **MAC.APP. 1091/2013**

TATA AIG GENERAL INSURANCE CO LTD ..... Appellant
Through: Ms. Meenakshi Midha, Adv.

versus

KAMLA DEVI & ORS ..... Respondent
Through: Mr. Ghanshyam, Advocate for R-1 to 6

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

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. By judgment dated 19.08.2013 while deciding the accident claim case (suit No.325/11/09) instituted on 01.12.2009 by the first to sixth respondents (claimants) and awarding compensation in the sum of Rs.14,13,476/- with interest at 9% per annum in their favour on account of death of Bhola Shankar in motor vehicular accident that had occurred on 29.10.2009 involving negligent driving of water tanker bearing registration No.DL 1LK 7450, admittedly insured against third party risk with the appellant insurance company (insurer), the latter (insurer) was called upon to pay, its plea about breach of terms and conditions of the insurance policy and consequently for exoneration or, in the alternative, for grant of recovery rights having been rejected.

2. By the appeal at hand, the insurer only presses for recovery rights submitting that there was no valid permit held in respect of the offending

vehicle on the date of accident which, it is argued, is a breach of terms and conditions of the insurance policy.

3. The tribunal found, on inquiry, that though there was a valid permit held in respect of the offending vehicle it had been suspended by the police authorities, one day before the accident since the vehicle was found to be wrongly overtaking another vehicle. The tribunal referred to *Regional Manager, United India Insurance Co. Ltd. v. Narayanappa & Ors.* 2012 ACJ 1805 and *Devender Singh v. Dukhi Shah* (MAC.APP.No.469/2009 dated 09.07.2012) and concluded that the reason for which the permit had been suspended was only statutory violation. The counsel for appellant relies upon *Uttar Pradesh State Road Transport Corporation v. Assistant Commissioner of Police* (2009) 3 SCC 634 to argue that the fact remains that there was no valid permit held on the date of the accident and, therefore, the plea of the insurer should be accepted.

4. Having considered the submissions in light of facts and circumstances of the case, this Court finds the view taken by the tribunal is correct. The rule of purpose applies. The temporary suspension of the permit cannot be treated as fundamental breach so as to permit the insurer to avoid its liability.

5. The appeal is dismissed.

6. The balance of the amount deposited by the insurer in terms of earlier shall also be released to the claimants in terms impugned award. Statutory amount, if deposited, shall be refunded.

**R.K. GAUBA**
**(JUDGE)**

**MAY 12, 2016/**VLD