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

**Date of Decision: 02nd March, 2016**

\+ **MAC.APP. 1087/2011 & CM APPL. 21838/2011, 21840/2011**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. P. Acharya & Mr. Sameer Nandwani, Advs.

versus

JYOTI & ORS ..... Respondents

Through: Mr. Atul Bandhu, Adv. for R-1 to 4.

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

**JUDGMENT**

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

1. The insurance company by this appeal challenges the direction of the motor accident claims tribunal (the tribunal) by judgment dated 30.04.2011 in MACT case no.173/2010/2008 to pay compensation in the sum of ₹15,10,000/- with interest to the first to fifth respondents herein (the claimants) on account of death of Vinod Kumar in a motor vehicular accident that occurred at 10:25 PM on 10.11.2007 involving Tavera (Chevrolet) car bearing registration no.HR-55FT-8006 (the offending vehicle) concededly insured with it against third party risk. The grievance of the insurance company is that its plea of breach of terms and conditions of the insurance policy was wrongly rejected even though it had shown that

the driving license of the driver of the offending vehicle was a fake document. By the appeal at hand it seeks exoneration or in the alternative, presses for recovery rights.

2. The tribunal has dealt with the above issue in the impugned judgment as under:-

> "*Respondent no. 3 insurance company examined one witness R3W1 who stated that respondent no. 2 was having fake driving license. He relied upon the report dated 25-3-2008 of some investigator Sh. Amit Verma Ex. R3W1/A in this regard. However respondent no. 3 neither examined that investigator who had given this report nor examined any witness from the concerned licensing authority which purportedly issued the license. This witness R3W1 had not accompanied the investigator and even otherwise also if the cross examination of this witness is read along with the report of investigator, then it reveals that investigator appears to have not properly got the correct license verified from the concerned authority. The number of correct driving license of the respondent no. 2 is 6067/HSD as per seizure memo Ex. R3W1/P-1 whereas report of investigator Ex. R3W1/A shows that driving license bearing no. 6067/BSD was got verified. R3W1 tried to explain in his cross examination that there is a typing mistake in the report but to substantiate it, respondent no. 3 has failed to examine the concerned investigator. Further the report of investigator shows that nothing in writing was obtained from the concerned licensing authority that driving license was fake. Even it is not the case of investigator that he had personally inspected the record of the licensing authority. It is also not disclosed which official of the licensing authority had informed the investigator that driving license was not genuine. In such situation, it is held that respondent no. 3 has failed to prove that driving license of the respondent no. 2 was fake or forged. Respondent no. 3 despite receipt of report about three years back did not took any steps to get the criminal case registered against the respondent no. 2 which fact also goes against it. Except this defence, there is no other ground available to the insurance company to oppose this petition. Respondent no. 3 has not brought on record any*

*other evidence to point out that it is not liable to pay compensation amount as assessed by the court or any term or condition of the Insurance policy was breached by the insured or it has any limited liability. Keeping in view the existence of valid insurance policy, respondent no. 3 alone becomes entitled to pay entire compensation amount.*"

3. It is the contention of the insurance company that even though it had moved application seeking further opportunity for evidence, it was wrongly closed.

4. Having heard the learned counsel for the insurance company, this court finds no substance in the appeal. The observation of the tribunal in the aforequoted paragraph from the impugned judgment shows that the insurance company had not led any evidence whatsoever to even prima-facie show that the driving licence was a fake document. Having gone through the proceedings recorded by the tribunal, it is noted that the insurance company has not been diligent in prosecuting its defence during the inquiry. Inspite of sufficient opportunity having been granted, proper evidence was not adduced.

5. In above facts and circumstances, the appeal is found devoid of substance and it is liable to be dismissed.

6. By order dated 05.12.2011, the insurance company had been directed to deposit the awarded amount with State Bank of India, Rohini Courts branch within the period specified. The amount deposited in terms of the said direction would be released to the claimants by the tribunal in terms of the impugned judgment. If there is default or shortfall, the claimants are at

liberty to take out appropriate execution proceedings to recover through the tribunal.

7. The statutory deposit, if made, shall be refunded.

8. The appeal is disposed of in above terms.

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

**MARCH 02, 2016**
**ssc**