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

Date of Decision: 1st April, 2016

\+ **MAC.APP. 902/2014**

RELIANCE GENERAL INSURANCE CO. LTD. ..... Appellant
Through: MS. Shantha Devi Raman, Adv.

versus

ASHA RANI & ORS ..... Respondents
Through: Mr. Sanjeev Srivastava, Adv. for R-1 to 5.
Mr. Ayyub Ahmad, Adv. for R-6.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 02.07.2014, the motor accident claims tribunal (tribunal) granted compensation in the sum of ₹ 32,90,725/- with interest in favour of the first to fifth respondents herein (the claimants) on account of death of Surender Singh in a motor vehicular accident that had occurred on 13.04.2010 involving rash driving of Wagon-R car bearing No. DL 1YB 3902 (the offending vehicle) by the sixth respondent (Harish Kumar), the offending vehicle admittedly being insured against third party risk with the appellant insurance company (the insurer) for the period on question.

2. During inquiry before the tribunal, the insurer had taken the plea that there was breach of terms and conditions of the insurance policy as Harish Kumar (the driver) was holding a driving license for light motor vehicle (LMV) –NT, which could not be treated as valid or effective license in the

context of vehicle used for commercial purposes. It is stated that the offending vehicle was being used as taxi at the time of the accident. This contention of the insurer was rejected by the tribunal and it was asked to satisfy the award.

3. By appeal at hand, the sole contention urged is that there was breach of terms and conditions of the policy for afore-mentioned reasons and, therefore, the insurer should have been exonerated or at least granted recovery rights. The insurer relies on order dated 11.02.2017 passed by a bench of two Hon'ble Judges of the Supreme Court in Civil Appeal No. 5826/2011 titled as *Mukund Dewagan vs. Oriental Insurance Co. Ltd. etc.* whereby the issue of breach of terms and conditions of the policy in such fact-situation has been referred to a larger bench.

4. The fact that Harish Kumar (the driver) possessed a valid and effective driving license for light motor vehicle (NT) was admitted before the tribunal. Though no evidence appears to have been adduced to show that the vehicle was being used for commercial purposes, even if that fact were to be assumed as correct, it cannot be ignored that a bench of three Hon'ble Judges of the Supreme Court in ruling in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 held, *inter alia*, as under:-

> *" 110. The summary of our findings to the various issues as raised in these petitions is as follows:*
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> *xxxxxx*
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> *(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.

Xxxx"

5. In the present case, there is concededly no material on which the insurer can argue that non-possession of a commercial driving license would have contributed to the cause for accident. In these circumstances, no case of fundamental breach has been made out.

6. The appeal is, thus, found to be devoid of substance and liable to be dismissed.

7. By order dated 01.10.2014, the insurer had been directed to deposit the awarded amount with accumulated interest with the Registrar General within the specified period, out of which 50% was released to the claimants, the balance kept in fixed deposit with UCO Bank, Delhi High Court Branch shall also be released to the claimants in terms of the impugned judgment.

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

9. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 01, 2016
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