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

Date of Decision: 15th February, 2016

\+ **MAC APP. 1239/2012 & CM APPL. 20404/2012**

NEW INDIA ASURANCE CO.LTD ..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

CHANDA DEVI & ORS ..... Respondents

Through: Mr. Seerat Sualeh & Mr. Puneet, Advs. for R-1 & R-6.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The short issue raised by the insurance company in appeal is that while deciding the claim petition of the first to sixth respondents herein, registered as suit no.611/2010 (2004), the motor accident claims tribunal (the tribunal) did not consider the plea of the insurance company (the third respondent) to the effect that the vehicle bearing registration no.HR-46A-8802 (the offending vehicle), which was involved in the accident on 25.02.2004 giving rise to the cause of action for compensation to be claimed, was put on road without a valid permit or fitness certificate. It is pointed out that though the insurance company had also raised the issue that the driver (seventh respondent herein) of the offending vehicle was not in possession of a valid driving license,

and that though notice under Order 12 Rule-8 of Code of Civil Procedure, 1908 (CPC) was served on the owner of the offending vehicle (eighth respondent herein) on 16.05.2010 calling him upon to produce the original permit, registration certificate and fitness certificate of the offending vehicle but there was no response.

2. The above noted issue and contention of the insurance company was not considered by the tribunal in the impugned judgment dated 09.08.2012. It is submission of the insurance company that the issue, thus raised, requires to be inquired into properly and adjudicated upon so as to address the claim of the insurance company to recovery rights against owner of the offending vehicle.

3. Neither the seventh respondent (the driver) nor the eighth respondent (the owner of the offending vehicle) have been appearing over the last several dates of hearing in this appeal, even though they had been duly served and had appeared through counsel till 04.10.2013. The learned counsel for the claimants submits that they have no objection to short inquiry requested by the insurance company to be held and the issue, *inter-se*, the insurance company and insured (owner of the vehicle) to be adjudicated upon.

4. Since the contentions of the insurance company were not even mentioned or considered by the tribunal in the impugned judgment, to the extent it was pressing for recovery rights on the ground that vehicle in question was put on public road without a valid permit or fitness certificate, the appeal is allowed. The issue respecting the breach of policy conditions for the above reasons is remitted to the tribunal for further inquiry and adjudication.

5. The parties (the appellant, seventh respondent and eight respondent) are directed to appear before the tribunal for aforementioned inquiry in accordance with law, on 19th April, 2016.

6. By order dated 07.12.2012, the insurance company had been directed to deposit the awarded amount with interest with the tribunal within specified period and, out of the same fifty percent (50%) was allowed to be released to the claimant. By subsequent orders, some further amount was allowed to be released. The balance amount lying in deposit shall also be released by the tribunal.

7. The statutory deposit, if any, be refunded.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 15, 2016
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