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

Date of Decision: 24th May, 2016

\+ **MAC.APP. 1118/2014 & CM No.20251/2014**

NEW INDIA ASSURANCE CO. LTD ..... Appellant

Through Mr. Mridul Jain, Adv.

versus

MAHINDER SINGH & ORS ..... Respondent

Through Mr. S N Parashar, Adv. for R-1 & 2

\+ **MAC.APP. 1138/2014 & CM No.20608/2014**

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through Mr. Mridul Jain, Adv.

versus

MAHINDER SINGH & ORS ..... Respondent

Through Mr. S N Parashar, Adv. for R-1 & 2

\+ **MAC.APP. 1141/2014 & CM No.20647/2014**

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through Mr. Mridul Jain, Adv.

versus

MAHINDER SINGH & ORS ..... Respondent

Through Mr. S N Parashar, Adv. for R-1 & 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 12.12.2004, Ajay Jain with his wife Neelam Jain and their child, Kumari Kashish were travelling in a car bearing No.DL 2CY 0082 and had reached jurisdictional area of police station Helena in Rajasthan when it was involved in a collision with tractor and trolley bearing registration No.RJ 05 1R 5868 (the tractor), concededly insured against third party risk with the appellant insurance company (insurer) for the period in question. As a result of the impact, the child died while Ajay Jain and his wife Neelam Jain suffered injuries.

2. Three accident claim cases were filed, on 23.04.2007 one (suit No.231/14) on account of death of child and the others (suit No.230/14 & 234/14) for the injuries suffered by Ajay Jain and Neelam Jain respectively. The accident cases, thus, instituted were clubbed by the motor accident claims tribunal and, on the basis of inquiry held, decided by common judgment dated 15.09.2014 whereby a finding was returned that the accident had been caused on account of negligence on the part of the tractor driver (first respondent in these appeals), who having, thus, been held to be the principal tort-feasor was liable to compensate. It was also held that the tractor was owned by Manohar Kumar (second respondent in these appeals), who consequently was jointly and severally liable on account of vicarious responsibility. The tribunal proceeded to award compensation in the three cases. It directed the insurance company to pay the awards rejecting its defense that the driver of the offending vehicle (the first respondent in these appeals) was not holding a valid or effective driving license because the insurance policy was in respect of a miscellaneous and special type of vehicle and the driving license held by the second respondent was valid for

purpose of motor vehicles in the nature of motorcycle and light motor vehicle (LMV) only.

3. The insurance company which has been burdened with the liability to satisfy the awards in these cases has come up with these appeals reiterating its aforementioned defence.

4. Having heard the learned counsel and having gone through the record, this Court finds no substance in the appeals. Noticeably, it was proved during the inquiry before the tribunal that the second respondent (the driver) was holding a valid driving license for purposes of a motorcycle and also for LMV. The tribunal also took note of the fact that the registration certificate of the vehicle showed that its unladen weight was 1074 kgs, which renders it to be a light motor vehicle only. Even if it be accepted that the tractor is a special type of vehicle, no evidence having been led to show that the absence of driving license authorizing the driver to drive such a vehicle has contributed to the cause of accident, there cannot be any finding returned about fundamental breach so as to allow the insurance company to avoid its liability. *[National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 and *United India Insurance Company Ltd. V. Lehru & Ors.* (2003 3 SCC 338]

5. Consequently, the appeals are unmerited and dismissed.

6. The amounts deposited by the insurance company in terms of orders shall now be released to the claimant.

7. Statutory amounts shall be refunded.

(R.K. GAUBA)
JUDGE

MAY 24, 2016/VLD