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

Decided on: 13th September, 2017

+ **MAC APPEAL No. 171/2010**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: **Mr. D.D. Singh & Mr. Navdeep Singh, Advs.**

Versus

CHARANJIT & ANR.

..... Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant insurance company was burdened with the liability to pay compensation determined under Section 163A of Motor Vehicles Act, 1988 by the motor accident claims tribunal by its judgment dated 17.09.2009 on the claim petition of the second respondent herein, due to death of her husband Atma Ram Malik in a motor vehicular accident involving three wheeler scooter described as TSR bearing registration no. DBR-3958 driven by the first respondent. The insurance company, while putting in contest, had pleaded that there has been a breach of terms and conditions of the insurance company as the driver did not hold a valid or effective driving license. This plea was rejected by the tribunal with observation that such issue

would arise only if the claim is instituted under Section 166 of Motor Vehicles Act, 1988 on the principle of fault liability.

2. The appeal was entertained only on the limited issue as to whether the appellant is entitled to recovery rights against the above backdrop.

3. Having heard the learned counsel for the insurance company, this court finds the appeal must be rejected. The tribunal has noted the evidence showing the driver to be holding a licence bearing no. C88027015 which was renewed on 06.02.1995 and which was valid. Even otherwise, the rule of main purpose and concept of fundamental breach applies. [See *National Insurance Company vs. Swaran Singh* (2004) 3 SCC 297].

4. The appeal is, therefore, dismissed.

5. The statutory amount shall be refunded.

SEPTEMBER 13, 2017

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R.K.GAUBA, J.