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

+ MAC.APP. 394/2008

THE NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Mohan Babu Agarwal, Advocate

versus

SUMAN & ORS. Respondents
Through: Mr. B.R. Bhatla, Advocate for
respondent No.7

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

% **ORDER**
25.05.2017

1. The appellant has challenged the award of the Claims Tribunal holding the appellant to pay compensation of Rs.2,88,064/- to respondents No.1 to 5.
2. The accident dated 15th September, 1998 resulted in the death of Rakesh Tawar. The deceased was survived by respondents No.1 to 5 who filed the claim application before the Claims Tribunal. The appellant contested the claim on the ground that the risk of the offending vehicle was covered from 16th September, 1998 to 15th September, 1999 vide cover note No.0502910. Respondent No.7 contested the claim on the ground that he paid the premium to the insurance agent on 12th September, 1998 and, therefore, the risk of the offending vehicle was covered on 15th September, 1998.
3. Vide order dated 17th October, 2016, the appellant was directed to produce the record of the investigation carried out against the agent of the insurance company in pursuance to which the appellant produced the

investigation report dated 22nd August, 2003. As per the said report, the premium was received by the insurance agent in the evening of 14th September, 1998 and the said amount was deposited with the insurance office on 15th September, 1998 and the cover note was issued for the period 16th September, 1998 to 15th September, 1999 in accordance with the circular dated 06th December, 1995.

4. Learned counsel for the appellant seeks permission to lead additional evidence to prove the investigation report and other relevant documents.

5. After hearing the parties at length, this Court considers the additional evidence necessary under Order XLI Rule 27(1)(b) of the Code of Civil Procedure. The impugned award dated 17th December, 2007 is upheld with respect to the award of compensation of Rs.2,88,064/- to respondents No.1 to 5. The appellant has already satisfied the award against respondents No.1 to 5. In that view of the matter, the issue as to whether the appellant is entitled to recovery rights against respondent No.7 is remanded back to the Claims Tribunal. The Claims Tribunal shall afford an opportunity of leading additional evidence to the appellant as well as respondent No.1 and shall thereafter, pass fresh award in accordance with the law. The appeal is disposed of in the above terms.

6. The parties shall appear before the Claims Tribunal on 26th July, 2017.

7. The statutory amount be refunded back to the appellant.

8. The record of the Claims Tribunal be returned forthwith.

9. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

MAY 25, 2017

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