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

Decided on: 22nd August, 2017

\+ MAC APPEAL No. 159/2009

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. Shoumik Mazumdar, Adv.

versus

ACHELAL & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The appellant insurance company (insurer) was first respondent in the claim petition (Suit no 66/2002), instituted by the first respondent herein (claimant) on 29.01.2002, seeking compensation for injuries suffered by him in a motor vehicular accident that had occurred on 03.09.2001, due to negligent driving of Tata Sumo car no. HR 29 G0333 by the second respondent (driver). It participated in the inquiry that was held leading to judgment dated 30.08.2008 whereby compensation was awarded in the sum of Rs. 45,000/-, the liability having been fastened against it to pay the same with interest.

2. The appeal by the insurer presses for recovery rights on the ground that there was breach of terms and conditions of the policy as the second respondent was not holding a valid or effective driving licence at the time of the accident.

3. Concededly, this plea was not pressed before the tribunal nor any evidence led in support. The appeal was filed with application (CM No. 4165/2009) seeking liberty to adduce "additional evidence" invoking Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), the grounds being that a report had been obtained from licensing authority about there being no valid or effective driving licence but "due to bonafide mistake", the report had remained in "other office file" and had got mixed up. The liberty to adduce additional evidence at the stage of appeal is not available for the asking. There has been no due diligence on the part of the appellant. The prayer for additional evidence is, thus, rejected. The contention not having been urged before the tribunal, there being no effort even otherwise to call upon the driver or owner of the offending vehicle at any stage including by way of notice under Order 12 Rule 8 CPC, the plea cannot be accepted.

4. The appeal is, therefore, found to be devoid of substance and is dismissed.

5. The insurance company must satisfy the award by requisite deposit with the tribunal forthwith.

6. Statutory deposit shall be refunded after proof is shown of the award having been satisfied.

R.K.GAUBA, J.

AUGUST 22, 2017
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