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

Decided on: 25th July, 2017

\+ CM(M) 213/2017 and CM 7064/2017

UNITED INDIA INSURANCE CO LTD ..... Petitioner
Through: Mr. G.S. Ahuja, Advocate

versus

PANKAJ & ORS ..... Respondents
Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocate for R-3 & 4

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

JUDGMENT (ORAL)

1. The petition at hand seeks to assail the order dated 18.11.2015 of the Motor Accident Claims Tribunal (Tribunal) on the file of the accident claim case (no.209/13/11), instituted by the third and fourth respondents (collectively, the claimants), *inter alia*, alleging death of Mahavir which had been caused due to negligent driving of the vehicle by the first respondent herein, the second respondent being described as the owner of the said vehicle.

2. The insurance company which had also been impleaded in such proceedings appears to have admitted its liability to indemnify but has raised the issue of breach of terms and conditions of the insurance policy on the ground that the driving licence of the first respondent was fake.

3. It appears the document purporting to be a driving licence issued by the Transport Authority, Mathura has been relied upon. It also appears that in the detailed accident report (DAR), the police had submitted a report from the said Transport Authority, Mathura confirming the above-noted stand of the insurance company.

4. Though the DAR had been admitted in evidence as Ex. PW1/1, the insurance company (the petitioner) had sought liberty to summon the official from the Transport Authority, Mathura to formally prove the said report. It is this request which was declined by the Tribunal by order dated 18.11.2015 and also by a subsequent order dated 24.12.2016 whereby the application under Order XVIII CPC was dismissed.

5. The claimants are present through counsel and submit that they have nothing to say on the request, since the matter concerns the insurance company on one hand and, the insured on the other. Inspite of due notice, the first or second respondents have failed to appear at the hearing.

6. In the given facts and circumstances, it would not be just or fair to deny opportunity to the insurance company to bring in formal evidence about the genuineness or otherwise of the document relied upon by the driver and owner of the vehicle to resist the plea of insurer of breach of terms and conditions of the policy.

7. Therefore, the petition is allowed. The impugned orders are set aside to the extent the permission was declined to the insured to have the official from the Transport Authority, Mathura summoned and examined.

8. The Tribunal shall give such opportunity to the insurance company which, needless to add, must take effective and timely steps, so that there is no unnecessary delay occasioned by such exercise. On appropriate steps being taken for the date to be fixed by the Tribunal, process shall be issued for the said witness and his presence secured.

9. With these directions, the petition and the pending application stand disposed of.

Dasti.

R.K.GAUBA, J.

JULY 25, 2017
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