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

Decided on: 18th July, 2017

+ **MAC.APP. 237/2008**

UNITED INDIA INSURANCE CO.LTD. Appellant

Through: **Mr. V.P. Malhotra, Adv.**

versus

MULAKHRAJ & ORS Respondents

Through: **Mr. Anil Sharma, Adv. for R-4.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The motor accident which gave rise to the cause of action for the accident claim case (MACT No. 12/2006) instituted by the first respondent herein on 04.07.2005 involved driving of light goods vehicle bearing registration no. DL 1LA 5620 (the offending vehicle). The appellant insurance company concededly had issued an insurance policy covering third party risk in its respect for the period in question. The tribunal, after inquiry, awarded compensation in the sum of Rs. 1,00,992/- with interest in favour of the first respondent, by judgment dated 14.01.2008, fastening the liability on the appellant insurance company. The appeal is pressed on the limited issue that the driving license held by the tort-feasor Mukesh Kumar (the second respondent), who was at the wheel of the vehicle was valid for light

motor vehicle (non-transport) and thus, there was breach of terms and conditions of the insurance policy. Taking note of this limited submission by order dated 09.04.2008 notices on the appeal were issued.

2. The judgment of the Supreme Court in *National Insurance Company Ltd. vs. Swaran Singh (2004) 3 SCC 297*, squarely covers the contention urged. In summing up its conclusions, the Supreme Court in para 110, *inter alia*, held thus:-

“ (i) to (v) xxx

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition or driving license is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149 (2) of the Act”.

3. Nothing is shown by evidence as to how the fact that the driver was holding a driving license for non-transport vehicle would have contributed to the cause of action.

4. The appeal is, therefore, dismissed.

R.K.GAUBA, J.

JULY 18, 2017

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