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

***Date of Decision: February 27, 2017***

\+ **MAC.APP. 268/2008**

ORIENTAL INSURANCE COMPANY LTD. ..... Appellant
Through Mr. J P N Shahi, Advocate

versus

GURBAX RAI & ORS ....Respondents
Through Mr. Survesh Bisaria, Advocate & Mr.Prakash Chandra Sharma, Advocate for Respondent No.1

**CORAM:**
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**
% **(ORAL)**

Impugned Award of 1st February, 2008 grants compensation of ₹2 lacs with interest @7% per annum to respondent No.1-Claimant on account of injuries sustained in road accident on 21st August, 2003. Respondents No.2 & 3 are owner and driver of vehicle in question. Appellant is Insurer of said vehicle. Facts already noted in impugned Award needs no reproduction for the reason that recovery rights are sought in this appeal by appellant-Insurer on the ground that driver of vehicle in question was driving said vehicle without any driving license.

At hearing, learned counsel for appellant-Insurer has drawn attention of this Court to paragraph No.8 of impugned Award to point out that driver of the truck in question was challaned by police for violation of Section 3 of *Motor Vehicle Act, 1988* i.e. driving without a driving license. Learned counsel for appellant-Insurer submits that learned Tribunal has erroneously brushed aside appellant-Insurer's submission for grant of recovery rights by observing that Notice under Order XII Rule 8 CPC was not issued by Insurer to driver of vehicle in question. So, it is submitted that recovery rights ought to be granted to appellant-Insurer on account of violation of Section 3 of Motor Vehicle Act, 1988 by driver of truck in question.

Respondents No.2 and 3, who are owner and driver of truck in question were represented by counsel on 17th February, 2010 and thereafter on 28th April, 2010 but no *power of attorney/vakalatnama* has been filed by them. Even before learned Tribunal there was no effective representation on their behalf. In this background, this appeal has been heard and is being decided.

Upon hearing and on perusal of evidence on record, I find that truck in question was being driven by driver without driving license and in such a situation, recovery rights ought to be granted to appellant-Insurer. Merely because Notice under Order XII, Rule 8 CPC had not been given to driver of vehicle in question, would not be a ground to deny recovery rights to appellant-Insurer as owner and driver of vehicle in question have chosen neither to contest before Tribunal nor before this Court. Question raised in this appeal, is no longer *res integra*. Hon'ble Supreme Court in *Oriental Insurance Company Ltd. vs. Zaharulnisha & Ors.,* (2008) 12 SCC 385 and also in *Kusum Lata & Ors. vs. Satbir & Ors.*, (2011) 3 SCC 646 has reiterated that where driver did not possess valid and effective driving license, in first instance, awarded compensation ought to be paid by Insurer and then it be recovered from owner and driver of vehicle in question.

In light of the aforesaid, impugned Award is modified to the extent that appellant-Insurer is to first pay awarded amount to respondent-Claimant (*which according to appellant's counsel has already been deposited)* and then to recover it from owner and driver of vehicle in question. The deposited amount as per order of 26th November, 2009, be directly released by the Registry/concerned bank into bank account of respondent-Claimant within four weeks of furnishing of bank account details.

To the aforesaid extent, this appeal is allowed.

Statutory deposit, if any made by Insurer, be refunded as per Rules.

Copy of this judgment be given *dasti* to learned counsel for respondent-Claimant.

**(SUNIL GAUR)**
**JUDGE**

**FEBRUARY 27, 2017**
*sm*