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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ MAC.APP. 296/2008, CM APPL. 6718/2008  
GITESH INFIN CO. .... Appellant  
Through: None.

Versus

NEW INDIA INSURANCE CO. LTD. & ORS. .... Respondents  
Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**  
% **09.05.2017**

The appellants have impugned the award which has granted right of recovery to the respondent insurer. A motor accident took place on 12.02.1999 resulting in the death of two persons, one of whom was driving the vehicle. The vehicle was owned by the appellant. An amount of Rs.4,39,116/- alongwith interest @ 9% per annum was awarded. This amount has been paid by the insurer. It had sought a right to recover the compensation amount from the owner of the vehicle because although the vehicle was insured, yet there was a breach of a policy condition i.e. the vehicle was leased out by the appellant to M/s. SVAM Power Plants Private Limited (SPPL) based in New Friends Colony, New Delhi. This fact is not disputed. It has been denied and has been recorded in the impugned order that:

*“The only other question which remains to be considered is whether the insurance company is liable to recover the awarded amount from the owner. Learned counsel for the insurance company has drawn*

*my attention to the insurance policy which has been placed on record, wherein, it is mentioned that the policy covers use for any purpose other than (a) Higher or reward (b) organised racing (c) speed racing. Learned counsel has also drawn my attention to the written statement of the owner, wherein, it is admitted by him that vehicle no. DL-6CB-1908 was given on lease to M/s. Svam Power Plants Pvt. Ltd., C-6/58, New Friends Colony, New Delhi vide agreement dated 06.12.96. The photocopy of the agreement is also on record. As per the terms of the same including lease summary Schedule attached to it, Maruti Esteem bearing registration no. DL-6CB-1908 was given on lease to M/s. Svam Power Plants Pvt. Ltd. for a period of 36 months w.e.f. 6.12.96. In view of the written statement and lease agreement, there is no manner of doubt in my mind that the owner committed breach of condition, of the policy by giving vehicle no. DL-6CB-1908 on lease. I therefore hold that Insurance Company shall be at liberty to recover the awarded amount from the owner.”*

In the appeal, the appellant has admitted that the offending vehicle was leased out to M/s. SPPL vide agreement dated 06.12.1996. Its driver was an employee of the lessee and he was holding a valid driving licence; since the driver was not in employment of the appellant, therefore no liability may lay upon the owner of the vehicle.

The Court is not required to see whether employment of the driver would have any bearing apropos the liability under Section 163-A of the Motor Vehicles Act.

As recorded above, the vehicle was leased out to M/s. SPPL, hence, there was a breach of policy condition. Therefore, although

third party liability has been met by the insurance company, it would have a right to recover the amounts paid by them as compensation, from the owner of the vehicle. In view of the above, there is no merit in the appeal. It is accordingly dismissed.

**NAJMI WAZIRI, J.**

**MAY 09, 2017**

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