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

Decided on :16th October, 2017

+ CM(M) 141/2015

M/S THE NEW INDIA ASSURANCE CO LTD Petitioner

Through: Mr.D.D.Singh and Mr.Navdeep
Singh, Advs.

versus

REKHA & ORS

..... Respondents

Through: Mr.S.N.Parashar, Adv. for R-1
to R-5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand challenges the order dated 19.12.2014 of the Tribunal in the course of the proceedings arising out of the accident claim (Suit No.173/2012) instituted by respondent Nos. 1 to 5 (claimants) whereby the request of the petitioner (insurance company) to examine the driver of the insured vehicle, a party to the claim proceedings, as a witness was rejected, after it having been permitted by order dated 12.11.2013 to raise the defences under Section 170 of the Motor Vehicle Act, 1988.

2. The ground on which the tribunal rejected the request for examination of the driver of the insured vehicle as a witness was that he could not be forced to enter the witness box since he had not chosen to do so on his own. This reasoning cannot be approved of

particularly as it cannot be ignored that the insurance company has raised a plea of collusion. The counsel for the claimant fairly concedes that the insurance company's request may be allowed.

3. The impugned order is thus set aside. The Tribunal shall allow the insurance company opportunity to lead evidence, *inter alia*, by examining the driver of the insured vehicle. If it requires assistance in securing the presence of the driver, requisite process shall be issued.

4. The petition is disposed of with these observations.

R.K.GAUBA, J.

OCTOBER 16, 2017

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