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

Decided on: 23rd October, 2017

+ **MAC APPEAL No. 515/2011**

NATIONAL INSURANCE CO. LTD. Appellant

Through: **Ms. Shantha Devi Raman &
Mr. Arihant Jain, Advs.**

versus

AMIT KUMAR & ORS. Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (claimant) had suffered injuries in a motor vehicular accident that took place on 20.07.2008 involving two vehicles one being Tata 407 tempo bearing registration no. DL 1LC 9583 (Tata tempo) and the other truck bearing registration no. HR 46B 7821 (the truck). The tata tempo was driven by the claimant while the truck was driven by the second respondent (driver), it being registered in the name of the third respondent (the registered owner), it concededly being insured against third party risk with the appellant insurance company (insurer) for the period in question. On the accident claim case (case no. 660/2009) instituted on 01.09.2009 by the claimant, the tribunal held inquiry and, by judgment dated

04.03.2011, held the truck driver responsible for the accident. Pertinent to note here that the driver and registered owner of the truck had chosen to suffer the proceedings *ex-parte*. The insurance company had resisted the claim, *inter alia*, pleading that there was breach of terms and conditions of the insurance policy since the truck was not covered by a valid permit. It led evidence by examining Ashok Kumar Beri (R3W1) its marketing officer on the strength of his affidavit (Ex.R3W1/1). The tribunal awarded compensation in the sum of Rs. 51,342/- in favour of the claimant and directed the insurer to pay the said amount with interest rejecting the contention of the insurance company for exoneration though observing that it would have the liberty to agitate the right to recover from civil court.

2. The appeal by the insurer is pressed to submit that the tribunal could not have short-shrived the plea raised in defence by the insurer and it was its obligation to decide the issue of breach of terms and conditions of the insurance policy in the same proceedings. It is submitted that since the breach was duly proved, it be granted recovery rights against the third respondent.

3. The second and third respondents though served have chosen not to appear even at the stage of appeal. The learned counsel for the appellant has been heard and the record perused.

4. The insurance company by its witness (R3W1) had proved that it had issued a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) (vide ex. R3W1/A) calling upon the third respondent to produce the permit in respect of the truck for Delhi, the

vehicle being registered in the State of Haryana, the accident having occurred within the territorial jurisdiction of police station Punjabi Bagh, Delhi. The insurer witnesses had also proved dispatch of the said notice vide postal receipt (Ex.R3W1/B) sent to the third respondent at his given address. In absence of any facts to the contrary, it has to be assumed that the notice would have reached the addressee in due course of postal transit. There was no response to the said notice nor any contest made to the proceedings before the tribunal.

5. In these circumstances, it has to be inferred that the third respondent was unable to show any valid permit taken out for the truck in question for the date, time and place when and where the accident occurred. The approach of the tribunal in calling upon the insurer to take out civil suit to press for recovery rights was most improper. The insurance company had taken all the necessary steps that were within its control. The registered owner of the vehicle (third respondent) having had the opportunity, failed to come up with the proof of valid permit and, therefore, it must be held that the insurance company had proved the breach of terms and conditions of the insurance policy. In this view, it deserves to be granted recovery rights against the third respondent.

6. The appeal is allowed. The appellant is granted recovery rights against the third respondent. For enforcement of such rights, it would have the liberty to take out appropriate execution proceedings before the tribunal.

7. The statutory amount shall be refunded.
8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 23, 2017

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