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

*Decided on: 24<sup>th</sup> October, 2017*

+ **MAC APPEAL 546/2011**

**THE NEW INDIA ASSURANCE CO. LTD. .... Appellant**

Through: **Mr. Priyadarsi Acharya,**  
**Advocate**

versus

**PAPPU KUMAR YADAV & ORS. .... Respondents**

Through: **Mr. S.N. Parashar, Adv. for R-**  
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**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. On the accident claim case (suit no.1043A/2010) instituted on 08.08.2007 by the first respondent (claimant), the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 15.03.2011, returned a finding that the claimant had suffered injuries in a motor vehicular accident that had occurred on the night intervening 4<sup>th</sup> and 5<sup>th</sup> April, 2006 due to the negligent driving of a truck bearing registration no.HR-45-8779 which was admittedly insured against third party risk with the appellant / insurance company (insurer) for the period in question. The driver and owner of the truck had already been impleaded as party respondents in the said claim case, they being the second and third respondents respectively in the appeal. Both the said respondents having filed written statement did

not participate in the subsequent inquiry during which the insurer of the truck took the defence that it was not liable to pay compensation since there was no permit held in respect of the truck for the date in question, it being a vehicle registered in the State of Haryana and the accident having occurred within the jurisdiction of Delhi.

2. The insurer had issued a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) to the owner of the vehicle (third respondent) calling upon the said party to produce the relevant documents. It led evidence by examining S.K. Arora (R3W1), Senior Assistant, who *inter alia*, proved the said notice under Order 12 Rule 8 CPC (Ex. R3W1/2), the said notice having been sent by registered post to the third respondent (owner of the truck) vide postal receipt (R3W1/3) and under postal certificate (Ex.R3W1/4). The evidence of the witness clearly shows that there was no response to the said notice.

3. The tribunal, however, awarded compensation in favour of the claimant and directed the insurer to pay, declining to grant any recovery rights to it on the ground that it had taken no steps for verification of the permit.

4. The appeal at hand is pressed by the insurer only to seek recovery rights against the second and third respondents. The said respondents though having put in appearance at one stage, have chosen not to appear at the hearing.

5. In the given facts and circumstances, it is found that the insurance company had taken all the necessary steps within its power and control. It had called upon the owner of the truck to produce a valid permit if there was any existing at the relevant point of time but

the owner would not respond. The natural inference is that there is no valid permit in existence. In these circumstances, the breach of the terms and conditions of the insurance policy has been brought home.

6. Thus, the appeal is allowed. The insurer is granted recovery rights against the second and third respondents. For enforcement of such rights, it shall have the liberty to take out appropriate proceedings before the tribunal.

7. By order dated 11.07.2011, the insurance company had been directed to deposit the entire awarded amount with interest with the Registrar General of this court and by order dated 04.10.2016, some portion of the amount was permitted to be released to the claimant, the balance kept in fixed deposit receipts. The Registry shall now calculate the balance payable to the claimant in terms of the award and release the same accordingly.

8. The statutory deposit made by the appellant shall be refunded.

9. The appeal is disposed of in above terms.

**R.K.GAUBA, J.**

**OCTOBER 24, 2017**

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