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

Decided on: 25th October, 2017

\+ MAC APPEAL 560/2011

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Manoj Ranjan Sinha, Advocate

Versus

OM LATA & ORS. ..... Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ashok Kumar Gupta, died due to the injuries suffered in a motor vehicular accident that took place on 07.09.2007 due to the negligent driving of a motor vehicle described as Tavera bearing registration no. DL-1VB-4536 admittedly insured against third party risk with the appellant / insurance company. His wife and other members of the family dependent on him, they being first to third respondents (collectively, the claimants) instituted accident claim case (MACT no.190/2008) on 17.10.2007 seeking compensation impleading the insurer as a party respondent in addition to the owner and driver of the offending vehicle, they being fourth and fifth respondents in the appeal. During the course of contest, the insurance company had taken the plea of breach of the terms and conditions of

the insurance policy on the ground that the driver (fifth respondent) did not hold a valid or effective driving licence. It had issued notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) (Ex. R3W1/B1 to R3W1/H) which had been sent by post to the fourth and fifth respondents (vide postal receipts also duly proved) through Surender Kumar (R3W1), Administrative Officer, to which there was no response. Pertinent to note that the driver and the owner did not participate in the inquiry before the tribunal, after filing the written statement, inspite of notice nor responded to the said notice under Order XII Rule 8 CPC. The Tribunal, however, rejected the plea of the insurance company primarily for the reason that in the corresponding criminal case the fifth respondent (driver) had not been prosecuted for the offence of having driven the vehicle without any driving licence. The liability to pay the compensation determined by the judgment passed on 05.03.2011, thus, was placed at the door of the insurance company which is in appeal to seek recovery rights reiterating the plea of the breach of the terms and conditions of the insurance policy.

2. The appeal was admitted and put in the list of 'Regulars' to come up on its own turn by order dated 01.08.2012. The fourth and fifth respondents insptie of due notice have not appeared to assist. The learned counsel for the insurance company has been heard.

3. Pertinent to add here that the fourth and fifth respondents have not filed any reply to the memo of appeal nor placed on record any valid or effective driving licence of the fifth respondent. Since no evidence was adduced to such effect even before the tribunal, the

natural corollary is that the fourth and fifth respondents are not in a position to produce any valid or effective driving licence of the fifth respondent. The insurance company, thus, must be held to have proved its case of breach of the terms and conditions of the insurance policy. The failure on the part of the investigation police in prosecuting the fifth respondent for offence under Section 3 read with 181 of the Motor Vehicles Act, 1981 is inconsequential.

4. For the foregoing reasons, the appeal of the insurance company is accepted. It is granted recovery rights against the fourth and fifth respondents. For enforcing such rights, it shall have the liberty to take out appropriate proceedings before the tribunal.

5. By order dated 03.06.2011, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest the Registrar General of this Court and from out of such deposit fifty percent (50%) was allowed to be released to the claimants, the balance directed to be kept in fixed deposits. The registry shall now calculate the amount payable to the claimants in terms of the impugned award and release the same to the claimants.

6. The statutory amounts shall be refunded.

7. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 25, 2017

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