

\$~R-211

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

Decided on: 15th September, 2017

+ **MAC.APP. 373/2010 and CM 11098-11099/2010**

**BAJAJ ALLIANZ GENERAL INSURANCE
COMPANY LTD.**

..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

VIRENDER PARSHAD SHAH & ORS.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The insurance company, on which the liability to pay the compensation in favour of the first to fifth respondent (collectively, the claimants) has been fastened by the judgment dated 01.04.2010 on account of death of Asha in a motor vehicular accident that occurred on 28.08.2007, is in appeal to only question the rejection of its defence that there was a breach of the terms and conditions of the insurance policy in respect of the offending vehicle, it being a three wheeler scooter bearing registration no.DL-1RK-0917 (TSR) concededly insured with it against third party risk, on the contention that the person driving (Khurshid Alam) was not the permit holder, the permit (Ex.R3W-1/1) carrying a stipulation that it was not transferrable and only the holder thereof (Naeem Ahmad) was authorized to drive.

2. Similar plea was rejected by this court in MACA 811/2010 *Iffco Tokio General Insurance Co. Ltd. Vs. Md. Muslim @ Md. Hussain & Ors.*, decided on 14.03.2016 with the following observations :

“9. The letting of the TSR on hire may amount to breach of permit conditions entailing penal action under the MV Act. But this, however, does not mean that the insurance company can refer to the said breaches as fundamental breaches of the insurance policy so as to seek to be absolved of its liability to indemnify. This Court in a series of judgment on the subject has rejected such contentions of the insurance companies. Reference may be made to National Insurance Co. Ltd. vs. Ram Rati & Ors. in MAC Appeal No. 11/2008 decided on 18.01.2008, Mahender Singh vs. Oriental Insurance Co. Ltd. & Ors. in MAC Appeal No. 430/2010 decided on 10.5.2012, National Insurance Company Ltd. vs. Suresh Kumar & Ors. in MAC Appeal No. 424/2009 decided on 1.11.2012 and New India Assurance Co. Ltd. vs. Prem Rani & Ors. in MAC appeal No. 885/2010 decided on 18.3.2015. In Mahender Singh (supra), the learned single judge while repelling similar contentions of the insurance company, in almost identical fact situation, observed as under:-

“Thus, the user of a transport vehicle for the purpose not allowed by the permit would be using a goods vehicle as a passenger vehicle, a passenger vehicle as a goods vehicle, etc. and not each and every contravention of the condition of permit issued by the concerned Transport Authority. Thus, simply because the vehicle was driven by a person other than the permit holder cannot be said to be a user of the transport vehicle for the purpose not allowed by the permit under which the vehicle was used.”

3. The appeal is, therefore, dismissed. The pending applications also stand dismissed.

4. By order dated 04.06.2010, the insurance company had been directed to deposit the entire awarded amount with the tribunal within the period specified. The said amount was allowed to be released by order dated 17.08.2010. Thus, no further direction in such regard are called for.

5. The statutory amount shall be refunded.

SEPTEMBER 15, 2017

yg

R.K.GAUBA, J.



न्यायमेव जयते