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

Decided on: 25th October, 2017

+ **MAC APPEAL No. 596/2011**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: **Mr. Priyadarsi Acharya, Adv.**

versus

SUNITA PARCHA & ORS. Respondents
Through: **None.**

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

JUDGMENT (ORAL)

1. On 08.04.2006, Arun Kumar while driving two wheeler scooter bearing registration no. DL3SW7856 met with an accident due to collision with another vehicle described as Tata 407 bearing registration no. HR 55B 3694 and died in the consequence. Accident claim case (suit no. 299/2006) instituted by his wife and three other members of the family dependent on him, they being first to fourth respondents (collectively, the claimants), resulted in judgment dated 29.03.2011, holding the fifth respondent, the driver of Tata 407 negligent in driving, this being the cause for fatal accident.

2. The tribunal awarded compensation in the total sum of Rs. 8,49,934/- and fastened the liability on the appellant (insurer) to pay. It appears the insurer had raised the plea that there was breach of

terms and conditions of the insurance policy as the driver (fifth respondent) was not holding a valid or effective driving licence on the date of accident. This plea was rejected by the tribunal.

3. In appeal, the insurance company asserts that the tribunal has failed to take into account the plea of contributory negligence on the part of the deceased since there was head-on collision. The insurance company also reiterates its plea of breach of terms and conditions of the insurance policy.

4. It is noted that the tribunal applied the principle of *res ipsa loquitur* and on that basis held the fifth respondent liable for the accident. No effort was made by the insurance company to prove the version of the fifth respondent to establish a case of contributory negligence. The plea, therefore, cannot be accepted.

5. The tribunal has noted that the fifth respondent held a valid driving licence till 31.08.2006. It appears the report of investigator engaged by the insurance company had also brought out that the licence was revalidated from 25.01.2007 to 24.01.2010. It is on this basis that the insurance company speculated that the licence was not valid. No effort was made to call in any official of the transport authority to ascertain their explanation for the discrepancy. In absence of such exercise, the plea cannot be accepted.

6. The appeal, therefore, is found to be devoid of substance and dismissed. The insurance company will be obliged to satisfy the impugned judgment in favour of the claimants.

7. The statutory amount shall be refunded after proof of the liability having been discharged is furnished.

R.K.GAUBA, J.

OCTOBER 25, 2017

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