$~25

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

Decided on: 22nd August, 2017

\+ MAC.APP. 517/2008 and CM APPL.14368/2008

MAHESH KUMAR SWAMI & ANR. ..... Appellants

Through: Ms. Palak Rohmetra, Advocate with Mr. Bhupesh Narula, Advocate

versus

SHASHI BALA AND ORS ..... Respondents

Through: Ms. Vandana Surana, Advocate for R-3.

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

JUDGMENT (ORAL)

1. Gaurav, a student of tenth standard, suffered injuries in a motor vehicular accident that occurred on 10.03.2006 due to negligent driving of a Light Motor Vehicle (LMV) plied as taxi bearing registration No.DL-1YA-1331 and died in the consequence. The first and second respondents (the claimants), being his parents, filed accident claim case (Petition No.594/2006) impleading the appellants as respondents, the first appellant being the driver of the offending vehicle and the second appellant being its registered owner. In addition, the third respondent herein (the insurer) was also impleaded as party respondent, it admittedly being the insurer against third party risk for the period in question.

2. During the inquiry before the Motor Accident Claims Tribunal (the tribunal), question of driver of the offending vehicle holding a valid or effective driving licence arose. The appellants had relied upon a driving licence valid for the period in question, but it not being valid for a commercial vehicle.

3. The tribunal, by judgment dated 25.01.2008, awarded compensation in favour of the claimants but relieved the insurer of its responsibility accepting its contention that liability could not be fastened upon it since the driver did not hold a valid driving licence. The responsibility to pay the compensation thus was placed at the door of the appellants.

4. The appeal primarily questions the exoneration of the insurer against the above backdrop.

5. The rule of main purpose and the concept of fundamental breach applies. [See: *National Insurance Company vs. Swaran Singh* (2004) 3 SCC 297]. In similar facts situation, this court by judgment dated 17.02.2006 has rejected the plea of the insurance company for recovery rights. (See: MAC Appeal no. 32/2006, titled *The New India Assurance Co. Ltd. vs. Arvinder Kaur & Ors.,* decided on 17.02.2006).

6. Thus, the appeal is allowed, the decision of the tribunal to exonerate the insurance company from the liability to indemnify is set aside. It is held that the third respondent (insurer) shall be liable to pay the compensation to the claimants and to indemnify the second appellant (the registered owner).

7. The insurance company is directed to make requisite deposit with the tribunal within thirty days, making it available to be released to the claimants.

8. The statutory amount shall be refunded to the appellants.

9. The appeal along with accompanying application stands disposed of in above terms.

10. *Dasti.*

R.K.GAUBA, J.

AUGUST 22, 2017
vk