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

Decided on: 31st October, 2017

+ MAC.APP. 776/2011

GORE LAL & ANR. Appellants

Through: None.

versus

UNITED INDIA INSURANCE CO LTD & ORS

..... Respondents

Through: Mr. Pankaj Gupta, Adv. for
Ms. Suman Bagga, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellants were impleaded in an Accident Claim Case (Case No.1108/2008) instituted for and on behalf of second to sixth respondents (collectively, the claimants). In the wake of Accident Information Report (AIR), as party respondents on the averments that they are the owner and driver respectively of the motor vehicle described as Tempo bearing registration No.DL-1LD-7498 which was involved in a motor vehicular accident that had occurred on 18.12.2007 resulting in death of Brij Kishore Gupta. The said vehicle

was admittedly insured against third party risk for the period in question with the first respondent (the insurer).

2. The claim that death had occurred due to negligent driving of the said vehicle was contested, *inter alia*, by the appellants by filing a joint written statement. The Tribunal held inquiry and on the basis of evidence led, by its judgment dated 27.01.2011, accepted the contention of the claimants about negligence on the part of the second appellant in driving the Tempo being the cause for the fatal occurrence. Accordingly, compensation in the total sum of Rs.7,40,096/- was awarded, the liability fastened initially upon the insurance company to pay. The insurance company had taken the plea that there was a breach of terms and conditions of insurance policy as there was no valid permit. This was held proved by evidence and, on that basis, the insurance company was granted recovery right against the appellants.

3. The appeal at hand was admitted on the limited issue with respect to the recovery rights. It was admitted and directed to come up on its own turn as per order dated 15.09.2016. When it is taken up and called out, there is no appearance for the appellants.

4. On perusal, it is noted that the prime contention of the appellants has been that there was no proof to the effect that the vehicle was plying for hire or reward. This is factually not correct. The evidence shows that the Tempo was on the move on a public road. It was a commercial vehicle and it was the burden of the appellants to prove that it was moving on the public road for purposes other than for

hire or reward. No evidence was adduced by the appellants. In these circumstances, the appeal is found to be devoid of substance. It is dismissed.

5. By order dated 29.08.2011, the appellants had been directed to deposit 50% of the awarded amount with the Registrar General. The said amount was directed to be kept in a Fixed Deposit Receipt for a period of three months with provision of renewal during the pendency. The amount in deposit with accrued interest, along with the statutory deposit, would be released to the insurance company towards part satisfaction of its claim under the recovery rights. For the balance, the appellants shall be obliged to make a requisite deposit with the Tribunal within 30 days, failing which the insurer will be at liberty to take out appropriate execution proceedings before the Tribunal.

6. The appeal is disposed of in the above terms.

OCTOBER 31, 2017

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R.K.GAUBA, J.