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

Decided on: 4th July, 2017

\+ MAC.APP. 519/2008

NATIONAL INSURANCE CO. LD. ..... Appellant

Through: Mr. Pradeep Gaur, Advocate

versus

SAVITRI DEVI PANDEY & ORS. ..... Respondents

Through: Nemo.

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

JUDGMENT (ORAL)

1. Though this appeal by the insurance company, directed against the judgment dated 03.07.2008 of Motor Accident Claims Tribunal (the Tribunal) on the file of accident claim case (suit No.207/2008) filed by the first to third respondents (the claimants) had raised a number of contentions, it is pressed only for recovery rights on the ground that Suraj Pal Singh, driver of the offending vehicle, it being bus No.DL-1P-2285 (the bus) was not holding a valid driving licence at the relevant point of time.

2. Having heard the learned counsel for the insurance company and having perused the record, it is noted that some evidence was led before the Tribunal on the above aspect by the insurance company, it having examined Mr. Satish Kumar Jindal, Senior Assistant (R3W2)

testifying on the basis of report (Ex.R3W2/C) of an investigator which, in turn, was based on report from the Regional Transport Officer, Bhopal. But, the impugned judgment also noted (in para 18) that Suraj Pal Singh (the driver in question) had died and, thus, proceedings qua him had abated. This was also noted by this Court in the proceedings recorded on 13.04.2009.

3. Notwithstanding the death of the driver, the insurance company could have proved breach of policy condition against Raj Kumari (the fifth respondent) who was impleaded as the second respondent before the Tribunal, she being the registered owner of the bus and the person in whose name the insurance policy was taken out. But then, no evidence was led concerning she being privy to the document touted as the driving licence being not a genuine one.

4. In above view, the appeal is without merit and is dismissed.

5. By order dated 02.12.2008 the insurance company had been directed to deposit the entire awarded amount in the name of the Registrar General and from the said deposited amount 50% was allowed to be released, the remaining kept in fixed deposit receipt. The interim order is vacated. The balance amount shall also be released to the claimants in terms of the award of the Tribunal.

6. The statutory deposit, if made, shall be refunded to the insurance company.

R.K.GAUBA, J.

JULY 04, 2017/vk