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

Decided on: 18th August, 2017

+ **MAC APPEAL No. 520/2009 & CM Nos. 14931-33/2009**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: **Mr. D.K. Sharma, Adv.**

versus

SMT. GAYATRI DEVI & ORS. Respondents
Through: **None.**

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

JUDGMENT (ORAL)

1. The only contention pressed by the insurance company in this appeal is to seek recovery rights on the ground that there was breach of terms and conditions of the insurance policy by the registered owner of the vehicle (eighth respondent), since the vehicle was registered in the State of Haryana, the accident having taken place in Delhi, the plea of insurance company being that there was no valid permit.

2. It is noted that the insurance company had due notice and had even participated in the inquiry before the tribunal. It did not seek any opportunity to lead evidence to above effect. It has now come up with an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) (CM No. 14933/2009), seeking such

opportunity on the ground that its counsel did not lead evidence, such omission “neither being intentional nor deliberate”.

3. The provision of Order 41 Rule 27 CPC is not available for the asking. The insurance company has not shown any good reasons why the opportunity was earlier not availed. There being no proof of due diligence, such opportunity ought not be granted at this stage, twelve years after the proceedings began before the tribunal.

4. The appeal with pending applications is dismissed.

5. The insurance company had been directed, by order dated 26.10.2009, to deposit the awarded amount with interest with UCO Bank, Delhi High Court Branch. The amount, if still lying in deposit, shall now be released to the claimants.

6. The statutory amount shall be refunded.

AUGUST 18, 2017

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R.K.GAUBA, J.

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