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

Decided on: 18th August, 2017

\+ MAC APPEAL No.521/2009 & CM No. 14936/2009 (stay)

NATIONAL INSURANCE CO. LTD. ..... Appellants
Through: Ms. Harsh Lata for Ms. Shantha Devi Raman, Adv.

versus

RANBIR SINGH & ORS. ..... Respondents
Through: None.

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

<u>JUDGMENT (ORAL)</u>

1. The second respondent, employee of third respondent, was the driver of the offending vehicle, it being a bus bearing registration no. DL 1PB 2283, at 7.00 p.m. on 28.03.2004 when it came to be involved in accident resulting in injuries being suffered by the first respondent leading to he filing claim petition (suit no. 186/2007) on 09.08.2004 which was decided by the tribunal, by judgment dated 27.07.2009. The bus was admittedly insured against third party risk with the appellant insurance company which was also in the array of respondents before the tribunal. By the impugned judgment dated 27.07.2009, compensation was awarded and liability to pay was fastened upon the appellant and its plea of breach of terms and conditions of the insurance policy was rejected.

2. The insurance company admitting the initial liability to pay has come up with this appeal pressing it to enforce recovery rights on the ground that the driver did not hold a valid driving licence on the date of the accident.

3. It is noted that the evidence had proved that the driver did not hold a valid driving licence till two months prior to the accident, his licence having expired. He obtained a fresh licence from 29.03.2004 onwards. Technically, the contention is correct that the driver did not hold a valid or effective driving licence. But, the rule of main purpose and concept of fundamental breach applies. The fact that the driver had a driving licence sometime prior to the accident and that he had been granted licence immediately after the event shows that he was not disqualified. There is nothing shown from the material on record that the absence of licence had contributed to the cause for accident. (See MAC Appeal No. 1042/2016 titled *Oriental Insurance Co. Ltd. vs. Deepa & Ors.,* decided on 11th August, 2017).

4. The plea for recovery rights is, thus, rejected. No other ground is pressed at the hearing.

5. The appeal with pending application is dismissed.

6. By order dated 26.10.2009, the insurance company had been directed to deposit the awarded amount with interest with UCO bank, Delhi High Court Branch. The amount deposited was released in terms of detailed directions in order dated 18.12.2009 to the claimants. No further directions in that regard are, thus, required.

7. The statutory deposit shall be refunded.

8. *Dasti.*

R.K.GAUBA, J.

AUGUST 18, 2017
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