$~R-122 & R-123

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

Decided on: 18th August, 2017

\+ MAC APPEAL No. 526/2009 & CM Nos. 15035-36/2009

ICICI LOMBARD GENERAL INS. CO. LTD. ..... Appellant
Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Adv.

versus

GEETA RAWAT & ORS. ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R-2 & 3.

\+ MAC APPEAL No. 527/2009 & CM Nos. 15038-39/2009

ICICI LOMBARD GENERAL INS. CO. LTD. ..... Appellant
Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Adv.

versus

KARAN SINGH & ORS. ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R-2 & 3.

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

JUDGMENT (ORAL)

1. On 11.10.2008, a motor vehicular accident took place involving collision between two vehicles one being bus bearing registration no. DL 1P 8663 (the bus) and the other being truck bearing registration

no. HR 63 5301 (the truck). While the bus was stationary, the accident took place statedly due to negligent driving of the truck, it being insured against third party risk with the appellant insurance company for the period in question. The collision resulted in death of Jeewan Singh, giving rise to cause of action for accident claim case (petition no. 435/2008) to be filed by members of his family dependent upon him, they being first to fourth respondents (collectively, the claimants in MAC Appeal no. 526/2009) and injuries to Karan Singh (first respondent in MAC Appeal no. 527/2009) who instituted his own accident claim case (petition no. 438/2008). Both the said petitions were decided by common judgment dated 7th August, 2009 with compensation being awarded, the liability being fastened against the insurance company.

2. By the appeal at hand, the insurance company seeks recovery rights against the driver and owner of the offending vehicle on the ground that the former (the driver) did not hold a valid or effective driving licence on the relevant date.

3. Noticeably, the defence of breach of terms and conditions of the insurance policy was not pressed before the tribunal. No evidence was led with regard to the facts on which the plea is being agitated. The insurance company has come up with application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) (CM No. 15036/2009 in MAC Appeal no. 526/2009 and CM No. 15039/2009 in MAC Appeal no. 527/2009) seeking such opportunity at this stage. There is no explanation given in the said applications as to why such evidence was not adduced at the time of the inquiry before the tribunal. The

permission to lead additional evidence at the stage of appeal cannot be claimed for asking. In absence of any proof of due diligence, the prayer cannot be granted. In above facts and circumstances the plea for recovery rights cannot be entertained.

4. The appeals with pending applications are dismissed.

5. By orders dated 04.11.2009 in each of these appeals, it was noted that only recovery rights were sought. The insurance company was directed to deposit the entire awarded amount with interest with UCO Bank in the accounts of the respective claimants. By detailed directions in the said orders, amounts thus deposited were allowed to be released. No further directions in this regard are, thus, called for.

6. The statutory deposits shall be refunded.

R.K.GAUBA, J.

AUGUST 18, 2017
nk