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

Decided on: 25th August, 2017

+ **MAC APPEAL No. 869/2014**

AHMAD HUSSAIN Appellant
Through: Ms. Swati Rathi, Adv.

versus

SANTRI DEVI & ORS. Respondents
Through: Ms. Suman Bagga & Mr.
Brijesh Bagga, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was the registered owner of motor vehicle described as Mahindra & Mahindra Champion bearing no. DL 1LN 2230, the negligent driving of which is stated to have resulted in motor vehicular accident that occurred on 10.12.2010 causing injuries to the first respondent (claimant) at whose instance the accident claim case (MACT 149/2011) was instituted. The tribunal, by its judgment dated 07.08.2013, granted compensation. The insurer of the vehicle (third respondent) while admitting the liability to indemnify had taken the plea of breach of terms and conditions of the insurance policy on the ground the driver did not hold a valid driving licence. This plea was accepted and while the insurer was fastened with the initial liability to pay the compensation, it was granted right to recover the same from

the appellant and from the second respondent, he being the driver, both having been held to be jointly and severally liable. It is the grant of recovery rights which are challenged at the hearing on the appeal at hand.

2. It is noted that the evidence on record proved that the driver did hold a valid or effective driving licence for a light motor vehicle (LMV). The registration certificate of the vehicle shows it is a light goods vehicle (LGV). In similar fact-situation, this Court has rejected the plea of the insurance company of breach of terms and conditions in a series of cases (See *National Insurance Co. Ltd. vs. Shama & Ors.* MAC Appeal no. 490/2008 decided on 19th July, 2017; *New India Assurance Co. Ltd. vs. Subhash Rastogi & Ors.* MAC Appeal No. 438/2009 decided on 25th July, 2017 and *Ram Narain Verma vs. Rajani & Ors. (Reliance General Ins. Co. Ltd.)* MAC Appeal No. 478/2017 decided on 27th July, 2017). Following the same view, the recovery rights granted against the appellant are set aside.

3. The impugned judgment insofar as it granted such recovery rights against the appellant is set aside.

4. The amount deposited by the appellant including in terms of the statutory requirements shall be refunded.

R.K.GAUBA, J.

AUGUST 25, 2017

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