$~R-678 & R-679 *(common order)*

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

Decided on: 8th December, 2017

\+ MAC. APP. 1246/2012

ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED ..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

SURIYA ANJUM & ORS. ..... Respondents

Through: Nemo.

\+ MAC. APP. 1248/2012

ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED ..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

KRISHNA DEVI & ORS. ..... Respondents

Through: Nemo.

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

JUDGMENT (ORAL)

1. By common judgment dated 08.08.2012, the motor accident claims Tribunal decided two accident claim cases, one (MACT Petition No.147/10), instituted by first to sixth respondents (of MAC APP.1246/2012), hereinafter referred to as the claimants on account of

death of Parvez Aslam, and the other, (MAC Petition No.146/10), instituted by first to sixth respondents (of MAC APP.1248/2012), hereinafter referred to as the claimants on account of death of Om Prakash.

2. Both the cases related to the same motor vehicular accident that had occurred on 11.02.2009, wherein motorcycle on which the two deceased persons were travelling had been hit by truck bearing registration No.HR-58A-4087 (the truck), causing injuries to each of them which proved fatal.

3. The appellant in both the appeals (insurer) which had admittedly issued the insurance policy covering the third party risk with respect to the truck, for the period in question had taken the plea of breach of terms and conditions of the insurance policy on the grounds that there was no valid permit taken out in respect of the insured vehicle. The tribunal rejected the said plea apparently on the basis of finding that a valid permit did exist in respect of State of Haryana for the period in question. Thus, while awards of compensation were granted in favour of the claimants in each case, the liability was fastened on the insurer to pay.

4. These appeals are pressed by the insurer only to seek recovery rights against Manish Aggarwal, owner of the truck and Babu Khan, the driver of the truck, each of whom have been impleaded as eighth and seventh respondent in these appeals. The said respondents, in spite of service, have failed to appear at the time of final hearing.

5. The tribunal's record includes copy of the First Information Report (FIR) No.33/2009, registered on 11.02.2009 in Police Station Hafizpur of District Ghaziabad, U.P. The said document (page 293 of the Tribunal's record in MACT Petition No.146/2010) itself is sufficient to prove that the accident had occurred not in the State of Haryana but in the State of Uttar Pradesh. The insurer had proved before the Tribunal, as is also observed in the impugned judgment (para 26), that there was no valid permit taken out in respect of the vehicle from the transport authority of the State where the vehicle was being plied at the time of accident.

6. In the above facts and circumstances, the insurance company has brought home its case of breach of terms and conditions of the insurance policy due to which it should have been granted recovery rights. Thus, the recovery rights are hereby granted in its favour against seventh and eighth respondents. For enforcement of such rights, the insurer is at liberty to take out appropriate proceedings before the tribunal.

7. By order dated 10.12.2012 (passed in MAC APP.1246/2012), the insurer was directed to deposit the entire awarded amount with the tribunal. The amount so deposited shall be released to the claimants in terms of the impugned award with upto date interest.

8. By order dated 11.12.2012 (passed in MAC APP.1248/2012), the insurer was directed to deposit the entire awarded amount with the Tribunal and by subsequent order dated 17.10.2014, part of the amount was ordered to be released to the claimants. The balance

deposited amount shall now be released to the claimants in terms of the impugned award with upto date interest.

9. The statutory deposits shall be refunded to the insurer in each case.

10. Both the appeals stands disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 08, 2017
vk