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

Decided on: 12th October, 2017

+ MAC.APP. 42/2014

SAFEWAYS CARGO (P) LTD

..... Appellant

Through: None.

versus

SMT KAPOORI DEVI & ORS

..... Respondents

Through: Mr. Pankaj Gupta, Adv. for R-4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant admittedly is the registered owner of motor vehicle described as truck bearing Registration no. HR-38L-6174. It was impleaded as the second respondent in the accident claim case (MACT No. 149/12/09) instituted by first to third respondents (collectively, the claimants) with further averments that on 13.03.2009 the said truck was driven by the fifth respondent in negligent manner this resulting in a motor vehicular accident at 11.05 p.m. in the area of Bijwasan Golakdham, causing the death of Rohtash Kumar. The truck was concededly insured against third party risk for the period in

question with the fourth respondent (insurer). During the inquiry, the insurer took the plea that there was a breach of terms and conditions of the insurance policy as the vehicle was not covered by a valid permit. Evidence in this regard was adduced showing that the permit earlier taken had lapsed on 11.07.2008 and there was no valid permit for the period in question. The Tribunal accepted the plea raised in defence by the insurer. Thus, while being called upon to initially pay the compensation to the claimants, the insurer was granted right to recover the said amount from the appellant.

2. The appeal at hand was filed questioning the grant of recovery rights. The application (CM APPL.6047/2014) was moved invoking Order 41 Rule 21 of the Code of Civil Procedure, 1908 (CPC) seeking opportunity to lead additional evidence to prove that a valid permit did exist on the date of accident. The said application was allowed and opportunity to lead additional evidence under Order 41 Rule 27 CPC was granted by order dated 29.02.2016. The case thereafter was listed on several dates before the Joint Registrar. But the appellant failed to adduce any evidence. The matter has thus come back before this Court with no further material or evidence having been brought on record to support the plea in appeal.

3. In absence of any evidence showing the existence of a valid permit for the date of the accident, the appeal is found to be devoid of substance and is dismissed. The stay against the enforcement of the recovery rights is vacated.

4. The statutory amount deposited shall stand forfeited as costs in favour of Delhi High Court Legal Services Committee. Registry to take appropriate steps in this regard.

R.K.GAUBA, J

OCTOBER 12, 2017

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