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

Decided on: 8th November, 2017

\+ MAC.APP. 388/2017

ICICI LOMBARD GENERAL INSURNCE CO LTD

..... Appellant

Through: Mr. Sandeep Jha, Adv.

versus

MAM RAJ AND ORS ..... Respondents

Through: Mr. S.N. Parashar, Adv. for R-1.

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

JUDGMENT (ORAL)

1. The cause of action in the accident claim case (MACT 442/2008) instituted by first respondent (claimant) on 08.02.2008 related to motor vehicular accident that had occurred on 11.11.2007 wherein the said claimant travelling on the pillion of scooter driven by Ram Naresh @ Naresh Kumar, had suffered injuries upon the said vehicle being hit by a light goods vehicle (LGV) bearing registration no. DL 1LH 7196, it admittedly being insured against third party risk with the appellant (insurer) for the period in question. During the inquiry, it was proved to the satisfaction of the tribunal that the said LGV was driven negligently by the second respondent (the driver), the

same being registered and insured in the name of the third respondent (owner/insured).

2. The insurer on which liability to pay compensation has been fastened, has come up in appeal questioning the liability on the ground that there was breach of terms and conditions of the insurance policy since the second respondent (driver) possessed a driving licence that permitted him to drive, besides a motorcycle, only a light motor vehicle (non-transport).

3. The plea about breach of terms and conditions of the insurance policy on above facts cannot be accepted. Similar plea was raised in MAC Appeal No. 869/2014 tiled *Ahmad Hussain vs. Santri Devi & Ors.* decided on 25th August, 2017 with the following observations:-

> *"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".*

4. In these circumstances, the appeal must fail. It is dismissed.

5. The insurer had been directed to deposit the entire awarded amount with interest within the period specified, such deposit to be

retained in interest bearing fixed deposit receipt. The amount deposited shall now be released to the claimant in terms of the impugned judgment.

6. The statutory amount, however, shall be refunded.

R.K.GAUBA, J.

NOVEMBER 08, 2017
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