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

Decided on: 11th August, 2017

\+ MAC.APP. 1042/2016 and CM 45519/2016

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. A.K. Soni, Advocate

versus

DEEPA AND ORS ..... Respondents

Through: Mr. Azad Ali, Adv. for R-7

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

JUDGMENT (ORAL)

1. On the accident claim case (suit no.367/2016), instituted by first to fifth respondents (collectively, the claimants), the Motor Accident Claims Tribunal (Tribunal), by judgment dated 05.09.2016, awarded compensation in their favour on account of death of Jitendra Kumar in a motor vehicular accident that occurred on 18.02.2014 due to negligent driving of a truck bearing registration no.RJ-06-GA-6308, which was admittedly insured against third party risk with the appellant insurance company (insurer), the liability having been fastened upon it (insurer).

2. The appeal is pressed only to seek recovery rights against the insured (seventh respondent), it admittedly being the registered owner of the offending vehicle, on the ground that the driver (sixth

respondent) was not holding a valid or effective driving licence on the date of the accident. This plea is sought to be substantiated by a report dated 14.10.2016 of investigator to the effect that the sixth respondent held a valid and effective driving licence for the vehicle in question but the same had expired on 28.12.2013, the accident having occurred later on 18.02.2014, for which purposes application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) is also moved for opportunity to lead additional evidence.

3. Even if the report to above effect were to be formally introduced in evidence, it would not make any headway for the appellant. The fact remains that it cannot be disputed that the driver held a valid and effective driving licence till 28.12.2013. It does appear that the licence had expired and it may be presumed that there was no renewal so as to cover its validity for the date of accident (18.02.2014). But, this fact, by itself, cannot mean that a case of breach of the terms and conditions of the insurance policy has been properly made out. The rule of main purpose as envisaged in *National Insurance Company V. Swaran Singh (2004) 3 SCC 297,* will have to be borne in mind. The fact that the driver held a valid and effective driving licence just less than two months prior to the date of the accident shows that he possessed the necessary skills and had the necessary competence and experience. There is nothing shown from which it could be deduced that absence of validity of the driving licence on the crucial date contributed to the cause of accident.

4. For the foregoing reasons, the appeal is found devoid of substance and the same, with pending applications, is dismissed.

5. The appellant had deposited the entire awarded amount with interest in terms of order dated 07.12.2016 which amount was released to the claimants by later order dated 03.02.2017. Therefore, no further directions in such regard are required.

6. The statutory amount shall be refunded.

R.K.GAUBA, J.

AUGUST 11, 2017

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