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

Date of Decision: October 05, 2018

\+ MAC.APP. 333/2013

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

JITENDER @ JEETU & ORS. .....Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 23rd January, 2013 grants compensation of ₹2,11,742/- with interest @ 9% p.a. to respondent-*Jitender (henceforth referred to as the "Injured"),* aged 26 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 25th May, 2007. The facts, as noticed in the impugned Award, are as under:-

> *"Briefly stated the facts giving rise to the petition are that on 25.5.07 at about 5 am, the petitioner alongwith his friends Neeraj and Amarnath were coming back to Delhi in car no. DL8CC8830 which was being driven by the petitioner and he was having valid and effective driving license and when they reached at NHPC Chowk in the meantime, the offending vehicle Tata 407 No. PB32A4962 which was coming from front Delhi side and was being driven by the respondent no.1 rashly, negligently at a reckless speed hit the car of the petitioner from front after coming on wrong side as a result of which the petitioner and his friends Neeraj and Amarnath sustained grievous injuries and multiple fracture on NCCT Head, Right leg, right knee, right femur and other*

vital organs of body. Petitioner was removed to B.K.Hospital, Faridabad where his MLC was prepared by the doctors and he was treated there by the doctors."

2. To render the impugned Award, Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* has relied upon evidence of Injured (PW-1) and as per Disability Certificate *(Ex.P-1)*, he had suffered 26% permanent disability in relation to right lower and upper limbs.

3. In this appeal, counsel for appellant-*The New India Assurance Company Limited (henceforth referred to as the "Insurer")* seeks recovery rights against respondents i.e. driver and owner of the insured vehicle. It is submitted that Route Permit has not been produced by owner of the insured vehicle despite service of notice under Order XII Rule 8 CPC upon him. It is pointed out that respondents-driver and owner of the insured vehicle, have not filed written statement and have not led any evidence. However, some counsel had appeared on their behalf to make a statement that the owner does not possess the Route Permit in respect of the insured vehicle and they are ready to settle the matter. To seek recovery rights, counsel for Insurer relies upon Supreme Court's decision in *National Insurance Company Limited Vs. Challa Upendra Rao & Ors.* (2004) 8 SCC 517.

4. Despite service, there is no representation on behalf of respondents.

5. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that despite service of notice under Order XII Rule 8 CPC on respondents-driver and owner of the insured vehicle, they have not come forward to produce the Route Permit or to contest the case set up against them. Supreme Court in *Challa Upendra*

Rao (Supra) has reiterated that plying of a vehicle without a permit is an infraction. Applying the aforesaid dictum to the facts of the instant case, I hold that denial of recovery rights by the Tribunal to appellant-Insurer is without any justification. The burden of producing the Route Permit is upon the owner of the insured vehicle and this burden cannot be shifted upon appellant-Insurer.

6. In view of aforesaid, impugned Award is modified to the extent of granting recovery rights to appellant-Insurer qua owner and driver of the insured vehicle.

7. While modifying the impugned Award to the aforesaid extent, this appeal is disposed of with direction to refund the statutory deposit, if any.

(SUNIL GAUR)
JUDGE

OCTOBER 05, 2018
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