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

Judgment dated: 31st January, 2019

+ **MAC.APP. 101/2019 & CM APPL. 2208-2209/2019**

HAJI SHAIDA HASSAN Appellant
Through: **Ms.Rani Chhabra, Advocate**

versus

NEW INDIA INSURANCE CO LTD & ORS Respondents
Through: **Mr.Shoumik Mazumdar, Advocate for R-1.**

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

1. The appellant has preferred the present appeal against the impugned Awarded 25.01.2017, passed by the learned tribunal.

2. Learned counsel appearing on behalf of the appellant submits that the learned tribunal went wrong on the point that Sunid Khan @ Aashif was not holding a valid driving license whereas factually it is incorrect. She further submits that Sunid Khan and Aashif are not different people and is one and the same person and the driving license is in the name of Sunid Khan. She

further submits that Sunid Khan @ Aashif is facing trial qua the accident in question before the Court of Special CJM, Meerut and a criminal case No.727/2012, under Sections 279/338/427/304 IPC was registered in this regard with Police Station Partappur at Meerut. She further submits that the appellant be given an opportunity to prove that Sunid Khan @ Aashif was holding the driving license on the date of the incident and prays that the impugned Award be set aside. She further submits that she has taken this plea in the written statement filed before the learned Tribunal. She further submits that under a bonafide mistake the driver of the offending vehicle could not be examined as a witness and prays that the appellant be given an opportunity to adduce additional evidence under Order 41 Rule 27 CPC.

3. Looking into the facts and circumstances, since the determination of valid driving license is a *sine qua non* in the instant case, therefore, the impugned Award dated 25.01.2017 is set aside and the matter is remanded to the tribunal for the limited purpose of adducing additional evidence under Order 41 Rule 27 CPC as to whether the driver of the offending vehicle was holding a valid driving license on the date of the incident. The tribunal is directed to give opportunity to both the parties to lead their respective evidence on this material point and then pass a fresh Award.

4. The parties are directed to appear before the tribunal for the above aspect on 14th March, 2019.

5. The appeal is disposed of accordingly. All pending application(s) (if any) also stand disposed of. Statutory amount be refunded.

6. *Dasti*.

I.S.MEHTA, J

JANUARY 31, 2019

