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

% *Decided on: 12.12.2019*

+ MAC.APP. 172/2019 & CM APPL. 4771/2019

M/S NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Hetu Arora Sethi, Adv.

versus

MD. AYAN & ORS Respondents
Through: Mr. Shrey Chathly, Adv. for R-1.

+ MAC.APP. 175/2019 & CM APPL. 4807/2019

M/S NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Hetu Arora Sethi, Adv.

versus

FURQAN & ORS Respondents
Through: Mr. Shrey Chathly, Adv. for R-1.

+ MAC.APP. 176/2019 & CM APPL. 4811/2019

M/S NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Hetu Arora Sethi, Adv.

versus

UZMA & ORS Respondents
Through: Mr. Shrey Chathly, Adv. for R-1.

+ MAC.APP. 177/2019 & CM APPL. 4819/2019

M/S NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Hetu Arora Sethi, Adv.

versus

SABA PARVEEN & ORS Respondents
Through: Mr. Shrey Chathly, Adv. for R-1.

+ MAC.APP. 180/2019 & CM APPL. 4847/2019

M/S NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Hetu Arora Sethi, Adv.

versus

GUFRAN KHAN & ORS Respondents
Through: Mr. Shrey Chathly, Adv. for R-1.

+ MAC.APP. 182/2019 & CM APPL. 4905/2019

M/S NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Hetu Arora Sethi, Adv.

versus

AREEBA & ORS Respondents
Through: Mr. Shrey Chathly, Adv. for R-1.

+ MAC.APP. 183/2019 & CM APPL. 4910/2019

M/S NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Hetu Arora Sethi, Adv.

versus

GUFRAN & ORS Respondents
Through: Mr. Shrey Chathly, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. These appeals impugn the award of compensation dated

29.10.2018 passed by the learned MACT in MACT Nos. 356472/16, 356473/16, 356587/16, 356588/16, 356589/16, 356631/16 & 358078/16, on the ground that despite being not so licensed, the offending motor vehicle was being used as a commercial vehicle at the time of the motor accident, therefore, there was a breach of policy condition. The learned Tribunal has returned a finding that the vehicle was indeed being used as a commercial vehicle. It has reasoned on this issue as under:

“.....10. Learned counsel appearing for the insurance company contended that the accident in question had taken place due to the sole rash or negligence of the car driver. It was further contended that though the car was registered as a private vehicle but it was being used as a commercial vehicle. Further it was overloaded at the time of accident as 8 persons were travelling in the said car.

(i) Per contra counsel appearing for the petitioners contended that no doubt the car was being used as commercial vehicle and overloaded but this itself does not prove that the accident had taken place due to the sole rash negligence of the car driver. It was argued that during cross examination of petitioners nothing has been surfaced even to show that there was any contributory negligence on the part of car driver.

(ii) In this regard testimony of petitioners are relevant. From the testimonies of witnesses examined by the petitioners, it is clear that the car was being used as a commercial vehicle, though it was registered as private vehicle. It is also clear that at the time of accident total eight persons were travelling in the care. This shows that the car was being plied by the owner in violation of the provisions of Motor Vehicle Act. But this itself is not sufficient to hold that there was any negligence on the part of car driver....”

2. The factum of the vehicle being used as a commercial vehicle is not denied. The vehicle was registered as a private vehicle and not for public purposes as a commercial vehicle. Therefore, the appellant shall be entitled to and is granted right of recovery from the owner of the offending insured vehicle. No other grounds are pressed at this stage. Be that as it may, for such breach, the principle of pay and recover as enunciated by the Supreme Court in *Manuara Khatun & Ors. vs Rajesh Kumar Singh* (2017) 4 SCC 796, shall be applicable and the compensation shall first be paid to the claimants.
3. The appellant is stated to have deposited the compensation amount before the learned Tribunal. Let the same be released to the beneficiary(ies) of the award in terms of the scheme of disbursement specified therein. The learned Tribunal shall ensure that the monies are released only into the bank accounts of the claimants, which are maintained in a bank near their place of residence. No cheque-book or ATM card shall be issued for the said accounts. Monies shall be permitted to be withdrawn only on the basis of withdrawal slip issued to the claimants.
4. Since the appellant has succeeded in the appeals, let the statutory amount along with interest accrued thereon be returned to it.
5. The appeals are allowed and disposed off in the above terms.

NAJMI WAZIRI, J

DECEMBER 12, 2019/_{kk}