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

% *Decided on: 03.09.2019*

\+ MAC.APP. 692/2018 & CM APPL. 30093/2018

UNITED INDIA INSURANCE COMPANY LTD..... Appellant
Through: Mr.Anshul Mehra, Advocate

versus

HINA & ORS ..... Respondent
Through: Mr.S.N. Parashar, Advocate for the respondent no.1 & 3
Mr.N.K. Jha, Advocate for respondent no.4.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>NAJMI WAZIRI, J. (Oral)</u>

1. This present appeal impugns the award of compensation dated 26.05.2018 passed in MACP No. 5459/16 on the ground that the insurance policy was an "Act Only" policy and it would not cover the pillion rider of the motor vehicle.

2. The learned counsel for the appellant relies upon the dicta of the Supreme Court in ***Oriental Insurance Co. Ltd. Vs. Surendra Nath Loomba & Ors.*** (2012) 13 SCC 792.

3. However, what is to be noted is that the policy relied upon by the insurer was never produced before the Trial Court.

4. In the circumstances, the learned Tribunal rightly assumed that the policy covered the pillion rider as well. The Tribunal has dealt with the same in paragraph 27 of the judgment, which read as under:

> *"27. Now, the question which arises for determination is as to which of the respondents is liable to pay the compensation amount. Respondent no. 2/insurance company did not adduce any evidence since it had no statutory defence. It is nowhere the case of insurance company that any term or condition of insurance policy was breached/violated by insured. Keeping in view the existence of valid insurance policy, respondent no.2/insurance company becomes liable to pay the compensation amount, as insurance company is liable to indemnify the insured. Issue no. 3 is decided in favour of the petitioners and against the respondents. "*

5. There is no justification by the appellant as to why the said policy was not produced before the learned Tribunal. The appellant is a large corporation with sufficient wherewithal to have produced the same during the trial. Neither any application has been filed for leading additional evidence nor a copy of the policy has been filed before this court.

6. In the facts and circumstances, no case is made out for interfering with the impugned order. Consequently the appeal is dismissed. Let the awarded amount be released to the claimant.

7. Statutory deposit, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund.

NAJMI WAZIRI, J

SEPTEMBER 03, 2019/*ssn*