

\$~59 & 60

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

% *Decided on: 05.09.2019*

+ **MAC.APP. 660/2017**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

versus

SHARDA & ORS ..... Respondents

+ **MAC.APP. 664/2017**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

versus

KUNTI DEVI @ KUNTA DEVI & ORS ..... Respondents

Through: Mr. J.P.N. Shahi and Ms. Shivangi  
Krishna, Advocates for appellant.

Mr. Jitender Kamra, Advocate for R-1  
& R-2.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Oral)**

1. These appeals against the order dated 27.04.2017 in MAC No. 89/14 (New No. 1208/16) impugn the Award of compensation passed by the learned MACT on the ground that the appellant is entitled to right of recovery for the compensation, which it has been made liable to pay. The impugned order had declined the right of recovery on the ground that the appellant/insurer had not sent notice to the driver under Order 12 Rule 8 CPC. It is the appellant's case that there is no requirement to serve notice to anyone other than the insured person. The Court agrees with the appellant's contention because the contract of insurance is only with the insured and there being no privity of contract with the driver, there is no requirement in

law to serve such notice upon the driver. It is not for the insurer to go on a wild goose chase to find the driver. The insurer had served notice upon the insured under Order 12 Rule 8 CPC calling upon him to furnish the driving licence of the person driving the vehicle, at the time of the accident. No driving licence was furnished either to the insurer or before the learned Tribunal. Accordingly, an adverse inference would be drawn that the driver concerned possessed no driving licence. Therefore, there was a breach of policy condition and the right of the insurer to recover the amount from the insured is made out. Accordingly, the impugned order is modified. Right of recovery is granted to the appellant against the owner of the vehicle-the insured.

2. The second challenge is to the 10% rate of interest granted by the learned MACT. It is argued that ordinarily for the past half a decade, the general rate of interest granted by learned MACT is @ 9% per annum. The Court would note that in ***Parminder Singh vs. New India Assurance Co. Ltd. & Ors.***, 2019 SCC OnLine SC 802, interest @9% was maintained. In view of the above, rate of interest is reduced from 10% to 9% p.a. on the awarded amount from the date of filing of the claim petition, till its realization.

3. The monies deposited by the appellant shall be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

4. The appeals stand disposed-off in terms of the above.

5. Since the appellant has succeeded in the appeals, let the Statutory amounts, alongwith interest accrued thereon, be returned to the appellant.

**NAJMI WAZIRI, J**

**SEPTEMBER 05, 2019/RW**

