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

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Decided on: 19.08.2019

+ MAC.APP. 1089/2018 & CM APPL. 50986/2018

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

MOHD ISLAM & ORS Respondents

Through: Mr. S.N. Parashar, Advocate for R-1
& R-2.

Mr. R.S. Juneja and Mr. Yogesh
Kumar Rana, Advocates for R-3 &
R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The award of compensation has been impugned on the ground that right of recovery has not been granted to the insurer against respondent nos. 3 and 4- the driver and the owner respectively, because the motorcyclist did not possess a valid driving licence. Indeed, the appellant had raised this issue in his written statement but no driving licence was produced. In the circumstances, the only conclusion that could be drawn is that the vehicle was being driven in violation of policy conditions.

2. On a query put to the learned counsel for respondent nos. 3 and 4 as to whether the motorcyclist did possess a driving licence, he submits that the motorcyclist was an able-bodied person and was only going to

neighbourhood petrol pump to fetch diesel. Nevertheless, he does concede that no driving licence of the motorcyclist was ever produced. The only conclusion that can be drawn is that the motorcyclist did not possess a valid driving licence. The use of the insured vehicle i.e. it being driven on a public road by a person who did not possess a valid driving licence is a clear breach of the policy conditions. Therefore, the insurance company cannot be held liable to pay any compensation. However, under the principle of pay and recover, the insurer is granted the right to recover compensation amount from respondent nos. 3 and 4 after paying it to the claimants. It is so directed.

3. The appeal is disposed-off in the above terms.
4. Statutory amount be returned to the appellant.
5. The deposited amount be released to the beneficiaries of the Award in MAC APP. NO. 239/2017 dated 28.08.2018, in terms of the scheme of disbursement as specified therein.

NAJMI WAZIRI, J.

AUGUST 19, 2019

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