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

% *Decided on: 21.10.2019*

\+ MAC.APP. 932/2017 & CM APPL. 38385/2017

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr. Animesh Sinha, Advocate.

versus

KASHMIR KAUR & ORS ..... Respondents

Through: Mr. Manu Shahalia, Advocate for R-1 to R-4.
Mr. Ajay Kumar Jha, Advocate for R-6.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 31.07.2017 passed by the learned MACT in Suit No. 4071/16 on the ground that the deduction of only $1/4^{th}$ is unjustified and it should have been $1/3^{rd}$ because one of the dependants is a married daughter.

2. This Court is not persuaded by the aforesaid contention. This Court in ***Bharti Axa General Insurance Co. Ltd. vs. Ram Avatar Mittal & Ors.*** in MAC.APP.299/2017 decided on 03.09.2019, has held that the issue of financial dependency of a married daughter will depend upon the facts of each case; simply because a daughter is married off does not necessarily reduce her financial dependency on her parents because there are

circumstances when genteel poverty of a married daughter, is sought to be ameliorated by her parents in many ways just like a married son who may be going through financial difficulties is also assisted by his parents.

3. In any case, there is nothing on the record to show that her claim of dependency was challenged on facts.

4. The second argument of the appellant- insurance company is that the right of recovery ought to have been granted against the owner of the vehicle because the person who was driving it at the time of the motor vehicular accident, did not possess a valid driving licence; that an opportunity having been granted to the owner to produce the driving licence of the so called mechanic who had taken it for a "test drive". This plea, having been specifically taken by the insurer in its reply and evidence, has gone unrebutted and the same ought to have been taken into consideration in the impugned order. However, there is no observation or discussion about this contention in the impugned order.

5. In the absence of the owner producing the driving licence of the driver of the offending vehicle, the only presumption would be that the said driver did not possess a licence. In the circumstances, the same would be considered as a breach of the policy conditions and a right of recovery should be granted to the appellant-insurance company. It is so granted.

6. The impugned order is modified accordingly. The appeal is allowed partly.

7. The awarded amount is stated to have been deposited before the learned Tribunal, of which 40% has already been released. Let the remaining amount, alongwith interest accrued thereon, be released to the

beneficiary(ies) of the award in terms of the scheme of disbursement specified therein.

8. The appeal is disposed-off in the above terms.

9. The statutory amount, alongwith interest accrued thereon, shall be returned to the appellant.

NAJMI WAZIRI, J

OCTOBER 21, 2019

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