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

Judgment dated: 27th February, 2019

+ CM(M) 1311/2017, CM APPL. 4082/2019 & CM APPL. 42116-42117/2017

THE NEW INDIA ASSURANCE COMPANY LTD Petitioner

Through: Mr.Parveen Kumar Mendiratta,
Advocate

versus

KUSUM & ORS

..... Respondents

Through: Mr.Jatinder Kamra, Advocate for R-1
to R-5 & R-7.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

I.S.MEHTA, J (ORAL)

1. The appellant has preferred the present petition against the impugned order dated 16.10.2017, passed by the learned tribunal.

2. Learned counsel for the petitioner submits that the learned tribunal vide impugned order dated 16.10.2017 has wrongly closed the right of the petitioner to examine the driver and owner of the offending vehicle. He further submits that he wants to examine them as a witness.

3. Learned counsel for the claimants opposes the contention of learned counsel for the petitioner and submits that the driver and owner of the offending vehicle are party and there is no statutory defence.

4. Looking into the facts and circumstances, since the appellant wants to examine the driver and owner as a witness in his defence in the claim petition, the prayer cannot be disallowed because the option to examine himself lies with the driver and owner, therefore, the impugned order dated 16.10.2017 is set aside. The tribunal is directed to give opportunity to the petitioner to examine both the witnesses with opportunity to cross examine them by the claimants and proceed with the matter in accordance with law. The tribunal is further directed to dispose of the claim petition as soon as possible, preferably within six months.

5. The parties are directed to appear before the concerned tribunal on 07th March, 2019.

6. With the aforesaid directions, the present petition is disposed of. All pending application(s) (if any) also stand disposed of.

7. A copy of this order be sent to the Court below forthwith.

8. *Dasti.*

I.S.MEHTA, J

FEBRUARY 27, 2019