

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

*Reserved on: 23<sup>rd</sup> November, 2011  
Pronounced on: 25<sup>th</sup> November, 2011*

+ **MAC APP. 580/2009**

M/S. NATIONAL INSURANCE CO. LTD..... Appellant  
Through: Mr. D.K.Sharma, Advocate.

Versus

RANVIR SINGH & ORS. .... Respondents  
Through: Shyam Singh Sisodia, Advocate  
for R-3

**CORAM:**

**HON'BLE MR. JUSTICE G.P.MITTAL**

1. Whether reporters of local papers may be allowed to see the Order?
2. To be referred to the Reporter or not?
3. Whether the Order should be reported in the Digest?

### **J U D G M E N T**

**G. P. MITTAL, J.**

1. The short question for determination in this Appeal is whether the Appellant M/s. National Insurance Company Limited ought to have been granted the right to recovery of the compensation awarded in favour of Respondents No.1 and 2. The deceased Omvir Singh died on account of the injuries sustained in a motor accident which occurred with Canter Truck bearing No.HR-38K-4731 on 14.02.2006. The truck was owned by

Respondent No.3 and was driven by Respondent No.4 at the time of the accident.

2. During inquiry, the Tribunal found that the accident was caused on account of rashness and negligence on the part of the Respondent No.4. Relying on *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009 (6) SCC 121* deducted 50% towards personal expenses the deceased being a bachelor took the average income of the deceased as ₹ 5196/- and on applying the multiplier of 13 as per the age of the parents; calculated the dependency as ₹ 4,05,288/- after adding notional conventional sum, the Tribunal made an award for ₹ 4,65,288/-.
3. The grievance of the Insurance Company is that it examined R2W1 Mr. I.K. Raina to prove the Insurance Policy Ex.R2W1/1 containing a condition that any person driving the motor vehicle must hold an effective driving licence at the time of the accident and is not disqualified from holding or obtained such a licence.
4. I was taken through an order dated 04.07.2009 passed by the Tribunal, MLO from the concerned Transport Authority was summoned to prove that the licence Ex.PW-1/F seized by the police during criminal proceedings could not have been issued on 12.05.2002, being Sunday.
5. It was urged that the Insurance Company that it was amply proved that there was breach of condition of the policy and the Insurance Company could avoid the liability under Section 149

(2) (a) of the Motor Vehicles Act, 1988. It is no longer *res integra* that the person who alleges breach must prove the same. The Insurance Company was thus required to establish the said breach by cogent evidence. Moreover, a bare perusal of the provision of Section 149 (2) of the Motor Vehicles Act leads to only one conclusion that the usual rule is once the insured proves that the accident is covered by the compulsory insurance clause, it is for the insurer to prove that it comes within an exception. In the event, the Insurance Company fails to prove that there has been breach of condition of policy on the part of the insured. The Insurance Company cannot be absolved by his liability. (*National Insurance Company Limited v. Swaran Singh 2004 (3) SCC 297*).

6. Apart from summoning the MLO in respect of the driving licence alleged to have been seized by the police during investigation of the criminal case, no steps were taken by the Insurance Company to ask the driver or the owner of the vehicle to produce the driving licence. Neither of them was summoned to appear as a witness. Thus, the Insurance Company has failed to discharge the onus that there was breach of the condition of the Insurance Policy.
7. Thus, the Insurance Company was under obligation to indemnify the insurer and could not avoid the liability. The Appeal is without any merit; the same is accordingly dismissed. No costs.

8. Pending applications also stands disposed of.
9. Copy of the order may be sent to the trial court for information.

**(G.P. MITTAL)**  
**JUDGE**

**NOVEMBER 25, 2011**  
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