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

Date of Decision: 13th May, 2016

+ **MAC.APP. 506/2013**

KRISHNA DEVI

..... Appellant

Through Mr. Jitender Saini and Mr. Rakesh
Ranjan, Advs.

versus

ORIENTAL INSURANCE COMPANY LIMITED & ORS.

..... Respondent

Through Mr. J P N Shahi, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 21.08.2009 while deciding accident claim case (suit No.855/2007) awarding compensation in favour of the claimants (the widow and other dependent family members of Mohar Singh) on account of death of Mohar Singh in motor vehicular accident that had occurred on 25.09.1997 involving Tata tempo No.DL 1LA 9187 (the offending vehicle) and directing the first respondent (insurer) to satisfy the said award, it being admittedly the insurer against third party risk respecting the offending vehicle for the period in question, it was granted recovery rights against the appellant, the owner of the offending vehicle, on the finding that the vehicle

in question was a goods vehicle and since the deceased was travelling as a gratuitous passenger there had been a violation of terms and conditions of the policy.

2. The appellant by the appeal at hand challenges the recovery rights.

3. It is noted that the pleadings and evidence on record clearly showed that the deceased had been engaged as a loader (*palledar*) along with certain other labourers for loading on to the vehicle certain goods and was carried in the vehicle to the point of destination, apparently for off-loading the said cargo. In these circumstances, the plea of breach cannot be sustained. It is set aside. The recovery rights are vacated.

4. The appeal stands disposed of.

R.K. GAUBA
(JUDGE)

MAY 13, 2016
VLD