$~R-41

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

Date of Decision: 29th March, 2016

\+ **MAC.APP. 417/2007**

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

MANJU UPADHAYE & ORS. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 13.03.2007, in accident claim case (suit No.348/03) brought by the first to fourth respondents (the claimants) on account of death of Alok Upadhaye in a motor vehicular accident that occurred on 02.11.2001, involving two wheeler scooter bearing registration No.DL 4SK 3386 (the offending vehicle) admittedly insured against third party risk with the appellant insurance company (insurer), the motor accidents claims tribunal (tribunal) awarded compensation in the sum of ₹4,09,505/- with interest, directing the insurer to satisfy the award.

2. The appeal has been filed challenging the aforementioned judgment and is pressed only on the ground that the deceased was travelling on the pillion of the offending vehicle and, therefore, his risk was not covered by the insurance policy.

3. On being asked, the learned counsel for the appellant submitted that the insurance policy (Ex.R1W1/A) was submitted on record of the tribunal during the inquiry by the registered owner. The perusal of the said document indicates, the terms and conditions of the insurance policy to include the following, under Section II (Liability to third parties) :-

> *"1. Subject to the Limits of Liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the Motor Cycle against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of*
>
> *(a) death of or bodily injury to any person including person conveyed in or on the Motor Cycle provided such person is not carried for hire or reward.*
>
> *(b) damage to property other than property belonging to the Insured or held in trust by or in the custody or control of the Insured or any member of the Insured's household or being conveyed by the Motor Cycle.*
>
> *PROVIDED ALWAYS that the Company shall not be liable in respect of death injury or damage caused or arising beyond the limits of any carriageway or throughfare in connection with the bringing of the load to the Motor Cycle for loading thereon or the taking away of the load from the Motor Cycle after unloading therefrom."*

4. On being asked, the learned counsel for the appellant submitted that clause (a) of the aforementioned condition would indeed cover the pillion rider, he being a person conveyed on the vehicle in question. If it were so, the appeal is unmerited and is liable to be dismissed.

5. By order dated 18.07.2007, enforcement of the impugned award was stayed. The subsequent proceedings show that the entire awarded amount

was deposited by the insurance company with the tribunal. In the subsequent order, it was noted that the amount deposited with the tribunal had already been released to the claimants.

6. The statutory deposit, if made, shall be refunded.

7. The appeal is dismissed.

R.K. GAUBA
(JUDGE)

MARCH 29, 2016
VLD