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

Date of Decision: 6th April, 2016

+ **MAC.APP. 1104/2013**

SITA RAM AND ORS.

..... Appellant

Through: Mr. Anshuman Bal, Adv.

versus

JITENDER PAL AND ORS.

..... Respondent

Through: Mr. Abhishek Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The accident claim case (MACT No.1080/2010) presented by the appellants (claimants) for compensation for death of their son Mukesh Kumar under Section 163A of Motor Vehicles Act, 1988 (MV Act) was dismissed by the motor accident claims tribunal (tribunal), by judgment dated 26-09-2013 on the basis of the statement of the registered owner (the first respondent) of the vehicle bearing registration No. DL 1LL 6904 indicating that the deceased had borrowed the same earlier from him for ferrying articles, assumed to be the entire truth, leading to the conclusion that the deceased had stepped into the shoes of the owner and, thus, he could not be treated as a third party so as to bind the insurance company

(the second respondent) which had concededly issued an insurance policy against third party risk in its respect.

2. Clearly, the tribunal failed to take note of the fact that the evidence on record also showed that the deceased was not driving the vehicle but was travelling in its rear portion, statedly collecting fare from certain other persons being carried as passengers. The facts show that death had occurred in an accident involving use of a motor vehicle which brings it within the four corners of the special provision contained in 163A of MV Act wherein the question of fault does not even arise. The tribunal did not even examine the liability of the registered owner in this light.

3. For the foregoing reasons, the impugned judgment cannot be sustained. It is set aside. The matter is remitted to the tribunal for further inquiry and fresh adjudication. The other contentions of the respondents are reserved to be agitated before the tribunal. The parties are directed to appear before the tribunal for further proceedings on 3rd May, 2016.

4. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 06, 2016
VLD