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

Decided on: 4th August, 2017

+ **MAC.APP.137/2009**

MADAN LAL

..... Appellant

Through: Mr. R.S. Juneja, Advocate with
Mr. Yogesh K. Rana, Advocate

Versus

THE UNITED INDIA INSURANCE CO. LTD. & ORS.

..... Respondents

Through: Mr. D.K. Sharma, Advocate for
R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was second respondent before the Motor Accident Claims Tribunal (the tribunal) in the proceedings arising out of the claim petition (MACT No.262/2006) taken out by the second to seventh respondent (collectively, "the claimants") for compensation on account of death of Ram Lakhan Pandit, who was a vegetable seller travelling with his goods in the tempo bearing registration No.DL-1LD-8165, which was admittedly insured against third party risk with the first respondent herein, he (the appellant) being the registered owner, the accident proved to have been caused due to negligence on the part of its driver Ramesh Kumar.

2. While awarding compensation in favour of the claimants and directing the insurer to pay, the tribunal by judgment dated 17.11.2008, granted liberty to the insurer to recover the said amount from the appellant on the ground that the deceased was travelling as a passenger in a goods vehicle which was against the terms and conditions of the insurance policy and further that the vehicle had not been maintained in a roadworthy condition.

3. The appellant assails the above said finding and the liberty granted for recovery.

4. Having heard the learned counsel on both sides, this court is of the opinion that the appeal must be succeed. The impugned judgment itself notes that the deceased had boarded the vehicle with his goods (vegetables) in which he would deal to earn his livelihood and, therefore, it cannot be said that he was travelling merely as a passenger. The finding that the vehicle was not roadworthy, also would not justify grant of recovery rights, in as much as the negligence on the part of the driver has been found to be prime reason for the motor vehicular accident.

5. Thus, the impugned judgment to the extent it granted recovery rights against the appellant is set aside.

6. The appeal is allowed in above terms.

7. The statutory amount shall be refunded to the appellant.

R.K.GAUBA, J.

AUGUST 04, 2017/vk