$~R-171

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

Decided on: 07th September, 2017

\+ MAC APPEAL 83/2010 and CM Nos.2634/2010 and 2635/2010

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. J.P.N. Shahi, Advocate

versus

K.N. BHATT & ORS. ..... Respondents
Through: None

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

JUDGMENT (ORAL)

1. Rajender, bachelor son of the first and second respondents (collectively, the claimants), was driving a motor vehicle described as one bearing registration no.HR-38GT-7686 on 15.08.2004 when he lost control over it due to the tyre getting deflated, the vehicle ending up in the fields on roadside and as a result of the injuries suffered, he died. The accident claim case (suit no.76/2009) instituted on 22.01.2009, invoking Section 163-A of the Motor Vehicles Act, 1988,resulted in judgment dated 13.08.2009 of the Motor Accident Claims Tribunal (Tribunal) whereby award of Rs.3,32,000/- has been granted, the liability having been fastened on the appellant / insurance company (insurer), which admittedly had issued the insurance policy

against third party risk at the instance of the registered owner of the vehicle (third respondent).

2. The insurance company, by the appeal at hand, contends that the deceased was not a third party, he having borrowed the vehicle from the registered owner.

3. Following the view taken in the rulings of the Supreme Court in *New India Assurance Company Ltd. vs. Sadanand Mukhi & Ors*., *(2009) 2 SCC 417* and *Ningamma & Anr. vs. United India Insurance Company Ltd.*, *(2009) 13 SCC 710* and the view taken by this court by judgment dated 02.03.2016 in *Oriental Insurance Co. Ltd. Vs. Shakuntala and Anr.*, *MACA 142/2007*, the contention of the insurance company must be accepted. The deceased having stepped into the shoes of the registered owner, the claim on account of his death cannot be treated as one of the third party.

4. The appeal is allowed. The impugned judgment in so far as it directed the insurance company to pay the compensation thereby determined is set aside. The amount deposited by the insurance company in terms of the order dated 11.02.2010 retained in fixed deposit shall be refunded with the statutory deposit.

5. The appeal and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 07, 2017
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