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

Decided on: 8th September, 2017

+ **MAC APPEAL No. 99/2010**

ORIENTAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. L.K. Tyagi, Advocate

versus

RAM NARESH UPADHYAY & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Pradeep Upadhyay died due to injuries suffered in motor vehicular accident that occurred on 02.08.2006 while riding on a motorcycle bearing registration No.DL-5SU-4305. His parents, first and second respondents (claimants), instituted accident claim case (MACT No.153/09/06) seeking compensation under Section 163-A of the Motor Vehicles Act, 1988, impleading owner of the said motorcycle and its insurer, the latter being now appellant, questioning the propriety of the award by judgment dated 02.12.2009, whereby it has been called upon to pay compensation, its plea being that it was not liable to indemnify, since the deceased cannot be treated as third party having been repelled.

2. In view of the decisions 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.

3. 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 impugned judgment in so far as it bound the appellant to indemnify and pay is set aside.

5. The statutory amount shall be refunded to the appellant insurance company.

6. The appeal is allowed in above terms.

SEPTEMBER 08, 2017

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R.K.GAUBA, J.