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

Decided on: 24th October, 2017

\+ MAC APPEAL No. 188/2007

PURAN CHAND (through LR's) ..... Appellant
Through: Mr. O.P. Maninee, Adv. for

versus

DHARMINDER SINGH & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Adv. for R-2.

\+ MAC APPEAL No. 240/2007

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv. for

versus

PURAN CHAND & ANR. (through LR's) ..... Respondents
Through: Mr. O.P. Mainee, Adv. for R-1.

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

JUDGMENT (ORAL)

1. Both these appeals arise out of judgment dated 19.12.2006 of the motor accident claims tribunal in accident claim case (petition no. 492/2006) which was instituted by Puran Chand (appellant in MAC Appeal No. 188/2007) on 10.04.2006 impleading, besides one Dharminder Singh, New India Assurance Company Ltd. (appellant in

MAC Appeal no. 240/2007) seeking compensation under Section 163A of Motor Vehicles Act, 1988 on account death of his son Ravi, a bachelor, then aged 21 year old, in a motor vehicular accident that occurred on 02.04.2006 involving motorcycle bearing registration no. DL 4S AU 5788.

2. By the impugned judgment, the tribunal awarded compensation in the sum of Rs. 1,62,000/- in favour of Puran Chand (appellant) and fastened the liability on the said insurance company, it having issued an insurance policy in respect of the said vehicle to cover the third party risk for the period in question at the instance of Dharminder Singh (the registered owner of vehicle). It is an admitted case of the claimant that the deceased was riding on the motorcycle having borrowed it from its owner Dharminder Singh, the accident having occurred on account of he losing control and balance, this resulting in the motorcycle hitting against the *patri* making him fall to suffer the fatal injuries.

3. The insurer by its appeal submits that it could not have been held liable since the deceased was not a third party. On the other hand, the claimant Puran Chand filed appeal seeking enhancement of compensation on the ground that the income of the deceased had not been properly determined. The original claimant has since died and has been substituted by his legal heirs. At the outset, the learned counsel for the claimant submitted that the prayer for enhancement of the compensation is not pressed.

4. The issue raised by the insurer is squarely covered by the decisions of the Supreme Court in *New India Assurance Company*

Ltd. Vs. Sadanand Mukhi and Ors., (2009) 2 SCC 417; Ningamma and Anr. Vs. United India Insurance Company Ltd. (2009) 13 SCC 710 and of this court in *Oriental Insurance Company Ltd. Vs. Shakuntala & Anr., MACA 142/2007*, decided on 02.03.2016. Since the deceased had borrowed the vehicle from its registered owner, his case could not be treated as that of a third party.

5. Thus, the impugned judgment insofar as it binds the insurer to pay the compensation thereby determined, is set aside. Ordered accordingly.

6. The statutory amount shall be refunded.

7. This disposes of both the appeals.

R.K.GAUBA, J.

OCTOBER 24, 2017
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