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

Decided on: 27th October, 2017

\+ MAC APPEAL No. 160/2009

ORIENTAL INSURNACE CO. LTD. ..... Appellant
Through: Mr. Ravi Sabharwal, Adv.

versus

MOHD. SAHIL & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The first respondent (claimant) was amongst the 25-30 persons who were travelling on board vehicle described as Swaraj Mazada bearing registration no. HR 46 F 7542, admittedly registered in the name of third respondent (the registered owner), it being driven at the relevant point of time by the second respondent (the driver) and insured against third party risk with appellant insurance company (insurer) on 02.10.2006, it having been deployed for purposes of ceremonies connected with *Durga Visarjan* on account of negligent driving of the said vehicle, it over-turned near Inter-State Bus Terminus, Delhi, resulting in injuries being suffered by several persons including the claimant. On accident claim case (petition no. 404/2008) instituted on 22.02.2007, the tribunal held inquiry and, by

judgment dated 13.01.2009 it was held that the accident had occurred due to negligent driving of the said vehicle. It awarded compensation in the sum of Rs. 4,31,280/- with interest in favour of the claimant.

While resisting the said claim case, the insurer had raised the plea that it could not be called upon to pay the compensation as the vehicle in question is a goods carriage vehicle, not meant for carrying passengers, and that since the claimant was a gratuitous passenger, its liability to indemnify the registered owner would not arise. Evidence on this subject was adduced including by the registered owner who appeared as his own witness (R2W1). The tribunal accepted the plea of the insurance company but then called upon it to pay the compensation to the claimant granting it, at the same time, recovery rights against the registered owner (third respondent).

2. By the appeal at hand, the insurance company argues that instead of being called upon to pay the compensation and getting it recovered, it should have been fully exonerated.

3. It is noted that in terms of the directions in the order dated 24th March, 2009, the appellant was directed to deposit the entire awarded amount with interest with the tribunal as a pre-condition to stay against execution. By order dated 27.08.2009, Rs. 25,000/- was released from out of such deposited amount to the claimant subject to outcome of the appeal. By order dated 13.09.2013, the said order was modified and 50% of the awarded amount was permitted to be released to the claimant, the balance kept in fixed deposit receipt. In the given facts and circumstances, it would be proper that the insurance company follows the dispensation ordered by the tribunal

and recover the amount from the registered owner. It has to be borne in mind that the case concerns a benevolent legislation where third party interests are involved. Since the interest of the insurance company is duly protected by the grant of recovery rights, this court would rather not interfere at this stage.

4. The appeal is disposed of with the observations that the insurance company may recover the amount in entirety from the third respondent (the registered owner). The remainder lying in deposit shall be released to the claimant.

5. The statutory amount shall be refunded.

R.K.GAUBA, J.

OCTOBER 27, 2017
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