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

Decided on: 1st August, 2017

\+ MAC APPEAL No. 140/2016

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. L.K. Tyagi, Adv.

versus

MUKESH VERMA & ORS. ..... Respondents
Through: Mr. S.N. Parashar & Ms. Pankaj Kumari, Advs. for R-1. Ms. Neelam Rai, Adv. for R-2.

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

JUDGMENT (ORAL)

1. The first respondent (claimant) was riding on motorcycle bearing no. DL 8S AF 0850 (the motorcycle), having borrowed it from his father (fourth respondent), it being registered in his name, on 27.12.2005 and met with an accident at about 9.40 p.m. in the area of Vijay Dharamkanta on main Mubarkpur Road, Delhi, statedly involving another motor vehicle, it being described as three wheeler scooter (Vikram) bearing registration no. DL 1W 0104 (TSR). While the motorcycle was insured against third party risk with the appellant insurance company, it having been impleaded as fourth respondent before the tribunal, the TSR was statedly driven by Rahul Gupta (fifth respondent), it being registered in the name of Raj Kumar (second

respondent), Lal Bahadur (third respondent) having been described as its actual owner.

2. In the accident claim case (suit no 395/2009) brought by the claimant under Section 163-A of Motor Vehicles Act, 1988, the tribunal, after inquiry, by judgment dated 17.11.2015, held that a case for compensation had been made out and awarded in the sum of Rs. 8,70,601.28 directing the appellant insurance company to pay.

3. The appellant insurance company has come up in appeal submitting that since it is the insurer of the motorcycle which was registered in the name of the fourth respondent, the claimant being his son and having borrowed it for use from the registered owner (insured), he would be a person not falling in the category of third party and, therefore, the insurer could not have been pertinent with the responsibility.

4. Having regard to the law laid down by the Supreme Courts in *New India Assurance Co. Ltd. vs. Sadanand Mukhi & Ors. 2009 ACJ 998* and *Ningamma & Anr. vs. United India Insurance Co. Ltd. 2009 ACJ 2020,* and as ruled by this Court in MAC appeal no. 142/2007 titled *Oriental Insurance Company Ltd. vs. Shakuntala & Anr.,* decided on 02.03.2016, the learned counsel for the claimant fairly conceded that the burden cannot be placed at the door of the appellant insurer. He, however, pointed out that the tribunal has failed to reach any clear findings as to the liability of the other respondents in terms of Section 163-A of Motor Vehicles Act and, therefore, requested that the matter may be remitted for fresh adjudication, particularly as there

is a dispute raised between the second and third respondents as to their respective responsibility.

5. The impugned judgment, insofar it directed the appellant insurance company to pay compensation, is set aside. The amount deposited by the insurance company in terms of order dated 12.02.2016 with the statutory deposit shall be refunded.

6. The claim case is remitted to the tribunal for fresh adjudication on the issue of liability of the other respondents. The said other parties shall appear before the tribunal on 1st September, 2017. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 01, 2017
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