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

Decided on: 24th October, 2017

+ **MAC APPEAL 527/2011 and CM 11123/2011**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: **Mr. Rahul Ranjan Verma, Adv.**

versus

CHITTRANJAN DASS NUKLA & ORS. Respondents
Through: **Mr. Pankaj Seth, Adv. for R-6**

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

JUDGMENT (ORAL)

1. The appellant herein is the insurer of the truck bearing registration no.RJ-23G-0574 which was one of the vehicles involved in a motor vehicular accident that took place on 11.03.2003, giving rise to the cause of action in favour of the first respondent to seek compensation through his accident claim case (MACP 399/2010) instituted on 19.04.2004, for injuries consequently suffered, the other vehicle being Toyota Qualis bearing registration no.HR-02G-2126 which was statedly insured against third party risk with National Insurance Company Ltd. (the sixth respondent).

2. The Motor Accident Claims Tribunal (Tribunal), by its judgment dated 03.01.2011, returned a finding holding the truck driver responsible for the accident and fastened the liability on the insurer of the said vehicle (i.e. the appellant) to pay the compensation

thereby determined. It appears that all three claim petitions had been filed including one by the driver of the Qualis car, he being the fourth respondent in these proceedings. In the said claim case, the appellant / insurer of the truck had concededly settled the matter on 18.11.2005 by agreeing to pay the compensation.

3. During the proceedings on the petition of the first respondent, the appellant had raised the plea of contributory negligence on the part of both the drivers. This plea was repelled by the tribunal, the liability in entirety having been fastened upon it. By the appeal at hand, the said contention is reiterated.

4. In the considered view of this court, the tribunal's view does not call for any interference. The appellant (insurer) of the truck having agreed to settle the claim of the Quails driver by paying compensation to him without raising the issue of contributory negligence, there is no merit in the appeal. It is dismissed. The pending application also stands dismissed.

5. The statutory amount shall be refunded after proof is furnished of award having been satisfied.

R.K.GAUBA, J.

OCTOBER 24, 2017

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