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

Decided on: 20th July, 2017

+ **MAC APPEAL 340/2009 and CM 9764/2009**

NATIONAL INSURANCE CO. LTD. Appellant
Through: **Mr. Amit Gaur for Mr. Pradeep
Gaur, Advocate**

versus

RAM PAL & ORS. Respondents
Through: **None**

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

JUDGMENT (ORAL)

1. In the claim case (MACT 422/2007) arising out of death of Raj Bahadur in a motor vehicular accident that occurred on 14.09.2005 involving vehicle no.DL-1LB-9282 concededly insured against third party risk for the period in question with the appellant insurance company, one of the defences raised was that the deceased was travelling as a gratuitous passenger and, therefore, the insurance company could not be called upon to indemnify.
2. The Motor Accident Claims Tribunal (Tribunal) rejected this contention by the impugned judgment dated 02.03.2009, correctness of the said view being questioned by the appeal at hand.
3. The above noted contention has been properly addressed by the Tribunal in the impugned judgment in paragraph 11 on the basis of

evidence led. The tribunal noted the testimony of Dimpy Singh (R3W1), Assistant of the Insurance company. She did not have any personal knowledge and, therefore, she was unable to prove that the deceased was not a member of the crew deployed on the vehicle at the relevant point of time. No attempt was made to prove the fact that the deceased was a gratuitous passenger when the claimants were leaving. The appeal is, therefore, devoid of substance and is dismissed.

4. The appellant had deposited the awarded amount with UCO Bank which was directed to be transferred to the State Bank of India, Tis Hazari Branch in terms of order dated 13.10.2009. Some amount out of the said deposit was allowed to be released to the claimants. The Tribunal shall take steps to ensure that the balance is also released.

5. The statutory deposit shall be refunded.

6. The appeal and the pending application are, accordingly, dismissed.

JULY 20, 2017

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R.K.GAUBA, J.