$~9

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

***Decided on: 24th October, 2017***

\+ MAC APPEAL No. 383/2008

ICICI LOMBARD GEN. INSURANCE CO. LTD ... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

LAXMI DEVI & ORS. ..... Respondents
Through: Mr. S.N. Parashar, Adv. for claimants.

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

**JUDGMENT (ORAL)**

1. The insurance company is aggrieved with the direction passed in the judgment dated 17th May, 2008 of the motor accident claims tribunal in the accident claim case (suit no. 287/2006) instituted on 20th May, 2006 by the first respondent, whereby compensation in the sum of Rs. 4,94,700/- was awarded and liability was fastened against it to pay with interest to the claimant who also represents the interest of third and fourth respondents on account of death of Sandeep Sharma in a motor vehicular accident that had occurred on 15.03.2006 while riding motorcycle bearing registration no. DL 7S AH 7582 (the motorcycle), the appellant being the insurer against third party risk in respect of the said vehicle, it being registered in the name of the second respondent.

2. It is an admitted case of the claimants that while riding on the motorcycle, the deceased had lost balance on account of slipping and striking against bricks lying on the roadside and suffered fatal injuries. It is an admitted case that he had borrowed the vehicle for such use from its registered owner (i.e. the second respondent).

3. The insurer, by the appeal, questions the liability on the ground that the deceased could not be treated as third party in the above-noted facts and circumstances.

4. The issue 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* and *Ningamma and Anr. Vs. United India Insurance Company Ltd. (2009) 13 SCC 710* as also 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 one of a third party. Thus, the impugned judgment insofar as it binds the insurer to pay the compensation thereby determined, is set aside. Ordered accordingly.

5. In terms of the directions by this Court, the appellant had deposited the entire awarded amount with the Registrar General and, by order dated 05.03.2009, Rs. 2,50,000/- was directed to be released to the claimants, the remainder kept in fixed deposit receipt with the Registrar General. The balance kept in fixed deposit receipt shall be refunded with statutory deposit to the insurance company. The release in favour of the claimants was on execution of their personal bonds.

In this view, the claimants will be obliged to refund the amounts which have been received by them in terms of the interim order. In case of default, the insurance company is at liberty to take out appropriate proceedings for its recovery.

6. The appeal is disposed of in above terms.

**R.K.GAUBA, J.**

**OCTOBER 24, 2017**
nk