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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 10th October, 2017

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MAC APPEAL No. 303/2009

SANTOSH KUMAR

..... Appellant

Through: Mr. Ashok Popli, Adv.

versus

ALOK MISHRA & ORS.

..... Respondents

Through: Mr. Pankaj Seth, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (Petition No. 379/2006) instituted on 6.09.2006 by the appellant was initially filed under Section 163-A of Motor Vehicles Act, 1988 but was converted into one seeking compensation on the principle of 'fault liability' under Section 166 of Motor Vehicles Act, 1988 at the instance of the claimant (appellant). The inquiry resulted in the impugned judgment being passed on 09.03.2009 holding that the appellant had failed to prove the fault on the part of the first respondent, described as driver of Maruti car bearing No. DL-2CAA-9287.

2. The first and second respondents though served have chosen not to appear or participate in the hearing on the appeal. The third respondent, the insurer of the car, has appeared through counsel.

3. At the hearing, the learned counsel for the appellant submits that since he has enough evidence to substantiate the use of the car in question on the public road and the accident involving the said vehicle resulting in permanent disability, he may be allowed to press it before the Tribunal on the principle of 'no fault liability' under the structured formula in terms of Section 163-A, Motor Vehicle Act, 1988. The counsel for the insurer on being asked submitted that he leaves the matter to the discretion of the court.

4. In the facts and circumstances of the case, the prayer is granted. The impugned judgment is set aside. The claim petition of the appellant shall be treated as one presented and pressed under Section 163-A Motor Vehicles Act, 1988 and inquired into accordingly by the Tribunal.

5. The parties are directed to appear before the Tribunal for further proceedings in above light on 10th November, 2017.

6. The tribunal's record shall be returned forthwith with copy of this judgment.

7. The appeal is disposed of.

R.K.GAUBA, J.

OCTOBER 10, 2017

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HIGH COURT OF DELHI



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