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

***Decided on: 25<sup>th</sup> August, 2017***

+ **MAC APPEAL No. 408/2008 and CM APPL.10297-98/2008**

**THE NATIONAL INSURANCE COMPANY LIMITED**

**..... Appellant**

**Through: Mr. Pankaj Seth, Advocate**

**versus**

**SANJU & ORS.**

**..... Respondents**

**Through: None.**

**CORAM:**

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

**JUDGMENT (ORAL)**

1. The second respondent is stated to have died and the first and third respondents have not been served, they no longer being residents of the given addresses.

2. The appeal by the insurance company against the judgment dated 15.12.2007 is primarily on the ground that it had no liability towards the deceased since he was a borrower of the motor vehicle, having taken it from the insured and, therefore, having stepped into his shoes and consequently he not being a third party. Reliance is placed on two decisions of the Supreme Court, they being *New India Assurance Company Ltd. vs. Sadanand Mukhi & Ors.*, (2009) 2 SCC 417, *Ningamma & Anr. vs. United India Insurance Company Ltd.*, (2009) 13 SCC 710 and decisions of this court following the said law

in a series of judgments including *Oriental Insurance Company Limited vs. Shakuntala & Anr.*, MAC APP.142/2007, decided on 2<sup>nd</sup> March, 2016.

3. In the given fact-situation where the matter will have to be eventually referred back to the tribunal for fresh adjudication on the above noted issue which has remained unaddressed, the proper course would be to remit the case to the tribunal for securing the presence of the respondents (claimants before it) and, thereafter, afford hearing to the parties on the limited question of liability of the insurance company in view of the above noted decisions and pass appropriate order. Ordered accordingly.

4. The amount deposited by the insurance company in terms of the earlier interim order shall be retained by the tribunal in an interest bearing account in a nationalized bank, for an appropriate period, such deposit to be availed in terms of the decision to be arrived at pursuant to the above mentioned directions.

5. The parties shall appear before the tribunal for further proceedings, in accordance with law, on 25<sup>th</sup> September, 2017. Needless to add, the tribunal will be obliged to issue processes to the claimants before proceeding further.

6. The appeal along with accompanying applications is disposed of in above terms.

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

**AUGUST 25, 2017/vk**