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

Decided on: 30th October, 2017

+ MAC.APP. 838/2011

REKHA DEVI & ORS

..... Appellants

Through: Mr. Amit Kumar Pandey,
Advocate

versus

NAND KISHORE JHA & ORS

..... Respondents

Through: Mr. Pradeep Gaur, Advocate for
R-3/insurance company

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (suit no.45/2010) instituted on 02.07.2003 by the appellants under Section 163-A of the Motor Vehicles Act, 1988 was dismissed by the Motor Accident Claims Tribunal (Tribunal) by judgment dated 19.03.2011 on the ground that the deceased Prem Chand Srivastava while driving three wheeler scooter bearing registration no.DL-1RG-9610(TSR) on 16.06.2002 at the time of its collision involving Opel car bearing registration no.DL-2CH-4325 (car) himself was negligent.

2. The claimants had impleaded as respondents to the claim petition not only the owner and insurer of the TSR, they being the first

and second respondent respectively in appeal, but also the owner and insurer of the car, they now being third and fourth respondents.

3. It is noted that the collision between the TSR and the car was not denied. The evidence adduced before the tribunal rather substantiated that to be a fact.

4. Reliance is placed by the insurer of the both the vehicles (the insurance company being common) on the decision of the Supreme Court in *National Insurance Co. Ltd. Vs. Sinitha and Ors.*, (2012) 2 SCC 356.

5. In a similarly placed case arising out of the MACA 967/2015, *National Insurance Co. Ltd. Vs. Neetu Verma and Ors.*, decided on 10.10.2017, where the liability had been fastened on the insurance company to pay the compensation determined under Section 163-A of the Motor Vehicles Act, 1988, challenge was brought to the judgment of the Motor Accident Claims Tribunal on the ground that the evidence would show negligence on the part of the deceased himself. This court held thus :-

“3. The insurer in its appeal submits that it is inherent in the aforementioned facts that the accident occurred due to the negligence on the part of the deceased himself and, therefore, the liability could not have been fastened against it. Reliance is placed on the decision of a bench of two Hon’ble Judges of the Supreme Court reported as National Insurance Company Ltd. vs. Sinitha & Others; (2012) 2 SCC 356. An earlier decision of a bench of three Hon’ble Judges of the Supreme Court reported as Deepal Girishbhai Soni & Ors. vs. United India Insurance Co. Ltd., Baroda; (2004) 5 SCC 385, however,

has taken a contrary view in the context of claims under Section 163-A of Motor Vehicles Act, 1988 after taking note of the special provision under Section 163-A of Motor Vehicles Act, 1988 ruling (in para 66) that “(Section 163-A of the Act) covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.”

4. In above view the plea of negligence is rejected. The appeal is dismissed.”

6. In above view, the impugned judgment cannot be sustained. The tribunal will have to adjudicate on the claim petition of the appellants keeping the issue of negligence out of consideration.

7. The impugned judgment is set aside. The matter is remanded to the tribunal. The parties are directed to appear before the tribunal on 28.11.2017.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 30, 2017

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