$~R-110

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

Decided on: 10th August, 2017

\+ MAC.APP. 493/2009

ICICI LOMBARD GENERAL INSURANCE CO. LTD. ..... Appellants

Through: Mr. Pankaj Seth, Advocate

versus

SUNITA DEVI & ORS. ..... Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 & 2

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

JUDGMENT (ORAL)

1. Vijay Yadav, was driving a motorcycle bearing registration no.DL-3S-AT 4402 (the motorcycle), having borrowed it from its owner Kamlesh Yadav (fifth respondent) herein on 10.05.2006 when at about 3.25 a.m. at Shahdara Flyover, near Shyamlal College, GT Road, Shahdara, Delhi, he met with an accident resulting in his death. The accident claim case (MACT no. 786/2008/06) was instituted by the wife and minor daughter, first and second respondents herein (collectively, the claimants), also impleading his parents as proforma respondents, they being third and fourth respondents herein, seeking compensation under Section 163A of the Motor Vehicles Act, 1988.

2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 06.08.2009, accepted the said claim case and awarded

compensation in the total sum of Rs.6,10,000/- with interest at the rate of 7.5% p.a. fastening the liability on the appellant / insurance company (insurer).

3. The insurer while contesting had raised the plea that it was not liable since it was a case of third party risk. This plea was rejected by the tribunal.

4. The insurer, by the present appeal, reiterates its plea for exoneration. This plea must be accepted in view of the law laid down by the Supreme Court in cases reported as *New India Assurance Company Ltd. Vs. Sadanand Mukhi and Ors., (2009) 2 SCC 417; Ningamma and Anr. Vs. United India Insurance Company Ltd. (2009) 13 SCC 710* and by this court in *Oriental Insurance Company Ltd. Vs. Shakuntala & Anr., MACA 142/2007*, decided on 02.03.2016. The deceased having borrowed the vehicle from its owner and having stepped into his shoes would not be covered by the third party risk. Therefore, the impugned judgment in so far as it fastened liability against the appellant / insurance company is set aside.

5. By order dated 12.10.2009, the insurance company had been directed to deposit the entire awarded amount with interest with UCO Bank A/c Sunita Devi, on which condition the execution of the impugned award was stayed. By order dated 10.12.2009, Rs.32,772/- was released from such deposit in favour of the first respondent and Rs.25,000/- was released to the fourth respondent, the balance being kept in fixed deposit receipt for the period specified. Liberty was granted to the claimants to draw monthly interest from the amount kept in fixed deposit receipts. The amounts kept in the fixed deposit

receipts, with interest that would have accrued thereupon, shall be refunded to the insurance company. The amount which has already been released from out of the deposit made may be recovered by the insurance company from the registered owner of the vehicle.

6. The statutory amount shall be refunded.

7. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 10, 2017
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