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

Decided on: 26th July, 2017

\+ MAC APPEAL No.471/2009

UNITED INDIA INSURANCE COMPANY LTD. ..... Appellant

Through: Mr. D.K. Sharma, Advocate

versus

BASANTI DEVI & ANR ..... Respondents

Through: Mr. S.N. Parashar, Advocate for R-1

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

JUDGMENT (ORAL)

1. Sanjay Negi, son of the first respondent was driving the scooter make Bajaj bearing registration no.DL-7S-AJ-1884 when it met with an accident and consequent to the injuries suffered he died. The accident claim case (suit no.601/05) was brought by the first respondent (claimant), *inter alia*, against the appellant insurance company, it admittedly being insured against third party risk in respect of the said vehicle. She also impleaded her husband Pratap Singh Negi (second respondent) as one of the respondents in the claim proceedings on the plea that he was the registered owner of the Scooter at the relevant point of time. The claim was made under Section 163-A of the Motor Vehicles Act, 1988.

2. The insurer, noticeably, took the plea that it could not be called upon to indemnify since the evidence showed that he had borrowed the scooter from the registered owner and, therefore, had stepped into his shoes. The tribunal noted this submission in para 10 of the impugned judgment but then failed to consider or give any benefit thereof to the insurer. The award of compensation granted was fastened as a liability on the insurer which has challenged it by the appeal at hand.

3. The issue is settled and covered by the judgments of the Supreme Court reported as *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 of this court in *MACA 142/2007 Oriental Insurance Co. Ltd. Vs. Shakuntala and Anr.*, decided on 02.03.2016.

4. Since the deceased was driving the scooter he statedly having borrowed it from his father, the registered owner / insured, he had stepped into his shoes. Therefore, the claim against the appellant, which is liable only to cover third party risk under the policy issued, cannot be maintained. The impugned judgment in so far as it directed the insurance company to pay compensation is set aside.

5. The appeal stands disposed of.

6. In terms of the interim orders passed earlier, the insurance had deposited the awarded amount out of which a portion was released to the claimant, the balance kept in fixed deposit with further direction for interest accruing thereupon to be paid to the claimant from time to time. The said directions are now vacated. The amount lying in

balance shall be refunded with the statutory deposit. The insurance company may take out appropriate proceedings to recover the amount earlier paid.

R.K.GAUBA, J.

JULY 26, 2017
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