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

Decided on: 10th August, 2017

+ MAC.APP. 487/2009 and CM 6169/2010

M/S. NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. D.K. Sharma, Advocate

versus

SANJHA DEVI & ORS. Respondents
Through: None

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

JUDGMENT (ORAL)

1. The claim petition (MACT 421/2008) filed by the first to fourth respondents herein (collectively, the claimants) on 26.04.2004 had initially sought compensation on the principle of fault liability under Section 166 of the Motor Vehicles Act, 1988. However, mid-way the proceedings on the application of the claimants, it was converted into a claim petition for compensation under structured formula on the principle of no fault liability under Section 163A of the M.V. Act. By the impugned judgment dated 02.07.2009, the Motor Accident Claims Tribunal (Tribunal), awarded compensation directing the insurance company to pay.

2. The appeal by the insurer is pressed on the ground that the insurance policy was an 'Act only policy' and, therefore, its liability was limited. Concededly, this plea was not urged before the tribunal

nor any issue pressed to such effect for adjudication. During the pendency of this appeal, on application of the insurer (CM 14104/2009), by order dated 25.11.2009, opportunity was given to lead additional evidence. In spite of a number of adjournments granted, no evidence was led and consequently, the said opportunity stood exhausted in terms of order dated 08.04.2010.

3. In the above facts and circumstances, the appeal is found devoid of substance and is dismissed.

4. By order dated 08.10.2009, the appellant had been directed to deposit the entire awarded amount with interest with UCO Bank, Delhi High Court branch. By order dated 25.11.2009, directions were given for release of the said amount. The amounts thus deposited and released shall be treated as amounts paid in discharge of the liability under the impugned judgment to be dealt with in terms of the directions of the tribunal in the impugned judgment. If there is any deficiency, the claimants are at liberty to move the tribunal by taking out appropriate proceedings in accordance with law.

5. The statutory amount shall be refunded.

6. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 10, 2017

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