$~R-117

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

Decided on: 18th August, 2017

\+ MAC APPEAL NO.516/2009

THE ORIENTAL INSURANCE COMPANY LIMITED ..... Appellant

Through: Mr. Ram N. Sharma, Advocate

versus

SMT. RITA & ORS. ..... Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 to 4

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

JUDGMENT (ORAL)

1. The accident claim case (MACT suit no.694/08/07) instituted by the first to fourth respondents (collectively, the claimants) on 15.11.2007 prayed for compensation under Section 163A of the Motor Vehicles Act, 1988 on account of the death of Vipin Sharma @ Babloo in a motor vehicular accident that occurred on 29.10.2007 involing a motor cycle no.DL-5SU-8644 (motor cycle). The registered owner of the said motorcycle (fifth respondent herein) was impleaded as the first respondent in the said proceedings with the appellant insurance company (insurer) as the second respondent.

2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 17.08.2009, awarded compensation in favour of the claimants

and directed the appellant to pay the said amount rejecting its contention of it not being liable since the deceased was not a third party.

3. It is clear from the pleadings and evidence on record that the deceased had borrowed the vehicle from the registered owner. In this view of the matter, he had stepped into the shoes of the registered owner (insurer) and therefore, would not be covered by the expression "third party", which liability was undertaken by the insurance company. In view of these facts, following the settled law on the subject, as per rulings of the Supreme Court in *New India Assurance Company Ltd. vs. Sadanand Mukhi & Ors*., *(2009) 2 SCC 417* and *Ningamma & Anr. vs. United India Insurance Company Ltd.*, *(2009) 13 SCC 710* and the view taken by this court by judgment dated 02.03.2016 in *Oriental Insurance Co. Ltd. Vs. Shakuntala and Anr.*, *MACA 142/2007*, the appeal of the insurance company must be accepted. The impugned judgment to the extent it directed the insurance company to bear the responsibility for payment of the compensation is set aside.

4. In terms of interim orders passed on this appeal, the insurance company had deposited the awarded amount with interest, part of which has already been released, some portion having been kept in fixed deposit receipts, *inter alia,* in terms of directions in order dated 22.12.2009. The amounts still lying in the fixed deposit receipts with corresponding interest shall be refunded to the insurance company which is given liberty to recover the amount paid beyond its liability.

5. The statutory amount shall be refunded.

6. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 18, 2017
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