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

Decided on: 11th September, 2017

+ MAC.APP. 428/2017 and CM 16792-16793/2017

**BHARTI AXA GENERAL INSURANCE
COMPANY LTD.**

.... Appellant

Through: Mr. Navneet Kumar and Mr. Vikas
Bhadana, Advocates

versus

BIMLA RANA & ORS

..... Respondents

Through: Ms. Amandeep Kaur, Adv. for R-1
to 6

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Partap Singh Rana was riding two wheeler scooter bearing registration no.DL-7S-BG-3565 on 09.09.2011 and when, at about 10.15 p.m., he had reached the traffic signal near Punjabi Bagh Club, Ring Road beneath the flyover of Punjabi Bagh, Delhi, his scooter met with an accident resulting in he suffering injuries which proved fatal. His wife and other members of the family dependent on him, they being first to sixth respondents (collectively, the claimants) instituted accident claim proceedings (old case no.108A/14 – new no.MACT case no. 476762/16) on 21.11.2011 in the wake of a detailed accident report (DAR) submitted by the local police, invoking Section 163-A of the Motor Vehicles Act, 1988. In the said proceedings, the owner of the said scooter and its insurer (appellant) against third party risk

were impleaded as party respondents.

2. By order dated 24.11.2016, the Motor Accident Claims Tribunal (Tribunal), awarded compensation in the sum of Rs.2,97,834/- fastening the liability on the appellant to pay.

3. The insurer is in appeal arguing that since the scooterist / deceased had borrowed the scooter from its registered owner, he having stepped into the shoes of the owner, he could not be treated as a party so as to bring the liability on to the appellant. This plea must be accepted in view of the rulings of the Supreme Court in *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 following the said law in a series of judgments including *Oriental Insurance Company Limited vs. Shakuntala & Anr.*, MAC APP.142/2007, decided on 2nd March, 2016 and MAC Appeal No. 408/2008 *National Insurance Company vs. Sanju & Ors.* decided on 25th August, 2017.

4. For the foregoing reasons, the appeal is allowed. The impugned judgment in so far as it holds the appellant liable to pay the compensation is set aside.

5. The statutory amount shall be refunded.

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

Dasti.

R.K.GAUBA, J.

SEPTEMBER 11, 2017

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