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

Decided on: 4th September, 2017

\+ MAC APPEAL No.707/2016

NATIONAL INS. CO. LTD. ..... Appellants
Through: Mr. Pankaj Seth, Adv.

versus

REKHA MISHRA & ORS. ..... Respondents
Through: Mr. J.S. Kanwar, Adv. for R-1 to 6.

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

<u>JUDGMENT (ORAL)</u>

1. On 21.12.2013, Vijay Pal Mishra was riding scooter No. DL 13 SE 3051 (the scooter) registered in the name of seventh respondent, it admittedly being insured against third party risk with the appellant insurance company for the relevant period. He was hit by an unknown vehicle at about 9.40 p.m. and suffered injuries consequent to which he died. First to sixth respondents (collectively, the claimants), being his wife and other members of the family dependent upon him, instituted accident claim case in the wake of detailed accident report (DAR no. D-40/2014) seeking compensation, impleading the owner and insurer of the scooter (which he was riding) as party respondents, the claim being pressed under the structured formula on the principle of fault liability in terms of Section 163-A of the Motor Vehicles Act, 1988. By judgment dated 23.05.2016, the tribunal accepted the said

claim and has granted compensation, fastening the liability on the insurer.

2. By the appeal at hand, the respondent questions the above directions arguing that the deceased or the claimants cannot be treated as third party in the above-noted factual matrix, relying upon the decisions 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.

3. The learned counsel for the claimants fairly conceded that the above decisions cover the issue. The deceased having borrowed the scooter from the registered owner was not a third party *vis-à-vis* the insurer. Thus, the appeal is allowed, the impugned judgment insofar as it fastened the liability on the insurer/appellant to indemnify is set aside.

4. The amount deposited by the insurance company in terms of order dated 02.09.2016 with the statutory amount shall be refunded.

5. This disposes of the appeal with the accompanying application.

R.K.GAUBA, J.

SEPTEMBER 04, 2017/nk