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

Decided on: 28th August, 2017

\+ MAC.APP. 620/2009 and CM APPL.18414-18415/2009

ORIENTAL INSURANCE COMPANY LIMITED... Appellant
Through: Mr. Pradeep Gaur, Advocate

versus

SHRI CHAND SHARMA & ORS ..... Respondents
Through: Nemo.

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

JUDGMENT (ORAL)

1. The accident claim case (MACT No.36/2007) which was instituted on 29.01.2007 by the first and second respondents (the claimants), invoking the structured formula, under the principle of no-fault liability in terms of Section 163-A of the Motor Vehicles Act, 1988, resulted in judgment dated 27.08.2009 passed by the Motor Accident Claims Tribunal (the tribunal), awarding compensation in the total sum of Rs.3,17,400/-, fastening the liability on the appellant insurance company (insurer).

2. The facts, as stated in the claim petition, noted by the tribunal in the impugned judgment, are that on 03.01.2007 Amit Sharma, the deceased, was riding motorcycle bearing registration No.DL-5SU-7568 which came to be involved in a collision with one bicycle resulting in he suffering injuries that proved fatal. The motorcycle

belonged and was registered in the name of the third respondent and insured against third party risk at the instance of the said respondent with the appellant insurance company.

3. While contesting, the insurance company had taken the plea that the deceased was not a third party since he had borrowed the motorcycle from the registered owner. This defence was repelled.

4. The plea of the insurance company to the above effect 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 decisions 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.

5. Since the deceased had borrowed the vehicle in question from its owner, he had stepped into the shoes of latter and, therefore, he cannot be treated as a third party for calling upon the insurance company to indemnify or pay. The impugned judgment, in so far as it held the insurance company liable is set aside.

6. The appeal of the insurance company with accompanying applications stands allowed. The amount deposited by the insurance company, with statutory amount, with corresponding interest shall be refunded.

R.K.GAUBA, J.

AUGUST 28, 2017
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