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

Decided on: 31st August, 2017

\+ MAC APPEAL No. 13/2010

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pradeep Gaur, Adv.

versus

MS. JYOTI & ORS. ..... Respondents
Through: None.

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

<u>JUDGMENT (ORAL)</u>

1. The impugned judgment was passed on 12.10.2009 on accident claim case (petition no. 07/09 – original number 477/2008) which was instituted on 28.04.2008 by the first to third respondents on their behalf, and also on behalf of fourth and fifth respondents (all of them collectively referred to herein as the claimants), on account of death of Sanjive Kumar Raghuvanshi in motor vehicular accident that occurred on 25.11.2006. As per the averments in the said case, the deceased was riding on motorcycle bearing registration no. DL 9ST 2326 when at about 11.35 p.m. in the area of H block, Vikaspuri, he lost control over it, the motorcycle striking against a pole resulting in he falling down and sustaining injuries that proved fatal.

2. The motorcycle was owned by the sixth respondent Anil Kumar, he being real brother of the deceased and it was insured against third party risk with the appellant insurance company for the period in question.

3. The claim case was initially presented as one under Section 166 of Motor Vehicles Act, 1988 but midway the proceedings, on the prayer made by the claimants, it was treated as one pressed for compensation under the structured formula on principle of no-fault liability under Section 163-A of the Motor Vehicles Act, 1988.

4. The tribunal, by the impugned judgment, computed compensation in the sum of Rs.4,88,800/- and directed the insurer to pay the same, rejecting its defences including on the ground that the deceased was not a third party.

5. The appeal questions the direction by the impugned judgment to the insurer to pay the compensation in the aforementioned facts and circumstances.

6. It is undisputed that the deceased was himself driving the motorcycle and there was no other vehicle involved. It has been the claimant's own case that the deceased had lost control over the motorcycle which was the prime cause for the collision resulting in fatal injuries being suffered. In these facts, it is inherent that the deceased had borrowed the motorcycle from its owner, he being his real brother.

7. Having borrowed the motorcycle from the registered owner, the deceased had stepped into his shoes and from this perspective it is clear that neither he nor the claimants (dependent upon him) can be treated as third parties so as to bind the insurer with the liability to indemnify. This is the effect of the law declared by 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 and MAC Appeal No. 408/2008 *National Insurance Company vs. Sanju & Ors.* decided on 25th August, 2017.

8. For the foregoing reasons, the impugned judgment in so far as it fastened the liability on the insurer to pay the compensation in this case is set aside. The appeal stands allowed accordingly.

9. By order dated 15.01.2010, the insurance company had been directed to deposit the entire awarded amount with the Registrar General of this Court within thirty days upon which the same was directed to be kept in fixed deposit receipt. The amount held in deposit with interest accrued shall now be refunded to the insurance company along with the statutory amount.

R.K.GAUBA, J.

AUGUST 31, 2017
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