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

Decided on: 10th August, 2017

\+ MAC.APP. 956/2016 and CM APPL.42734/2016

MANISH SHARMA ..... Appellant

Through: Mr. Murari Kumar, Adv. with Mr. Shiv Shankar, Adv.

versus

MATADIN SAIN & ANR. (THE ORIENTAL INSURANCE CO. LTD.) ..... Respondents

Through: Mr. J.P.N. Shahi, Advocate for R-2.

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

JUDGMENT (ORAL)

1. The appellant was the first respondent in the claim proceedings arising out of petition No.109/2015, instituted by the first respondent seeking compensation for injuries suffered in a motor vehicular accident that occurred on 21.03.2015 due to rash and negligent driving of car bearing registration No.DL-1YD-6999, admittedly insured against third party risk with the second respondent (insurer).

2. By judgment dated 28.03.2016, the Motor Accident Claims Tribunal (the tribunal) held that the accident had been caused due to negligent driving of the car by the appellant, he also being the owner of the said vehicle. The insurance company, however, had taken the plea of breach of terms and conditions of the policy, on the ground

that the driving licence held by the appellant, though for a light motor vehicle (LMV) was not valid for commercial vehicle. It is on this ground that the recovery rights were granted against the appellant in favour of the insurer.

3. By the appeal at hand, the judgment is assailed only to the extent that it granted recovery rights to the insurer. The appeal must be accepted in view of ruling of the Supreme Court in *Mukund Dewangan vs. Oriental Insurance Company Limited, 2017 (7) SCALE 731.*

4. The impugned judgment to the extent recovery rights were thereby granted to the insurance company is hereby set aside.

5. The appeal is allowed in above terms.

6. The statutory amount shall be refunded to the appellant.

7. The pending application also stands disposed of.

R.K.GAUBA, J.

AUGUST 10, 2017
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