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

Decided on: 25th September, 2017

\+ MAC.APP. 969/2015 and CM 30530/2015

NEW INDIA ASSURANCE COMPANY LTD ..... Appellant
Through: Mr. Ravinder Singh and Mr. Arnav Vidyarthi, Advocates

versus

CHANDA DEVI & ORS ..... Respondents
Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates for R-1 & 2

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

JUDGMENT (ORAL)

1. The accident claim case (case no.823/2012) of the first and second respondents (collectively, the claimants) instituted on 22.11.2012 arose out of death of Arjun Lal Shrivastwa in a motor vehicular accident that occurred on 03.12.2006. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 23.11.2015, accepted the case under Section 163A of the Motor Vehicles Act, 1988 and awarded compensation in the total sum of Rs.4,53,300/- fastening the liability on the appellant / insurance company (insurer) to pay with interest at the rate of 9% p.a.

2. In the claim case it had been pleaded that the deceased was riding motor cycle bearing registration no.DL-4S-BD-7511 on

03.12.2006 when it came to be involved in a collision against a stationary bus bearing registration no.DL-1PA-6616 leading to the fatality. The appellant is admittedly the insurer against third party risk in respect of the motor cycle, the other party herein being the registered owner and the entity at whose instance the insurance cover was taken. The deceased who was an employee of the third respondent, had admittedly taken the motorcycle from it for his personal use.

3. Against the above backdrop of facts, the insurance company submits that it could not be held liable as the deceased could not be a third party. In view of the law laid down by the Supreme Court in cases reported as *New India Assurance Company Ltd. Vs. Sadanand Mukhi and Ors., (2009) 2 SCC 417; Ningamma and Anr. Vs. United India Insurance Company Ltd. (2009) 13 SCC 710* and by this court in *Oriental Insurance Company Ltd. Vs. Shakuntala & Anr., MACA 142/2007*, decided on 02.03.2016, the deceased having borrowed the vehicle from the registered owner had stepped into its shoes and hence cannot be said to be a third party.

4. In above view, the impugned judgment whereby the appellant / insurer was burdened with the liability to pay the compensation is set aside. From out of the amount of compensation deposited by the insurer in terms of order dated 11.12.2015, fifty percent (50%) was allowed to be released to the claimants. In the given facts and circumstances, the insurance company is granted recovery rights in such respect against the third respondent. The balance lying in deposit shall be refunded to the insurance company with statutory deposit.

5. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 25, 2017
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