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

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Decided on: 04.09.2019

+ MAC.APP. 313/2014

RELIANCE GEN INS CO LTD

..... Appellant

versus

NANAK KHEMANI & ORS

..... Respondents

+ MAC.APP. 314/2014

RELIANCE GEN INS CO LTD

..... Appellant

Through:

versus

KAMAL KHEMANI & ORS

..... Respondents

Through: Ms. Shantha Devi Raman, Advocate
for appellant.

Mr. S.N. Choudhri, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The award of compensation dated 03.01.2014 in MACP No. 223/13 has been impugned on the ground that while the insurer has been made liable to pay the amount of compensation, no right of recovery has been granted to it against the owner or the driver of the offending-insured vehicle.

2. It is the appellant's case that a person known to the owner of the insured vehicle, who also lives in the same locality had come to her home seeking some compact discs, which were kept in the car; she gave the keys and got busy with her domestic work; she never authorized nor permitted the said person to drive the vehicle or to take it away, the said driver has admitted that he did not possess a driving licence. His driving of the said vehicle resulted in the motor-vehicular accident, causing one fatality and serious injuries to another person. The Court would note admission of the owner of the vehicle did not complain to the police against the person to whom the car key had been given; that he was not authorized to drive the offending-insured vehicle. It would be the normal and rational response if the owner of the vehicle found that the vehicle had been misused, especially to the extent that it caused a fatality and serious injuries to another person, to immediately approach the police against the unauthorized use of the vehicle. All social acquaintances ties apropos such delinquent person, would have to be put aside on the occasion. The criminal trial is still pending against the driver. Whether he was authorized or unauthorized is a matter, which may well be determined in the criminal proceedings. But insofar as the vehicle owner has not brought any evidence in her defense, that she had not authorized or permitted the acquaintance, to drive the said vehicle, she would be responsible for any damage caused by use or misuse of such vehicle.

3. In view of the above, the impugned order is set aside. The insurer is granted right of recovery against the owner and the driver. Reference is

made to the decision this Court in *Mohsina vs. Bajaj Alliance Gen. Ins. Co. Ltd. & Anr.* decided on 21.08.2019 in MAC APP. 1017/2018.

4. It will be open to the owner to pursue his rights against the driver, who had allegedly misused the vehicle.

5. Statutory amount, alongwith interest accrued thereon, be returned to the appellant.

NAJMI WAZIRI, J

SEPTEMBER 04, 2019

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