

(1) FAO No. 1383 of 2012 (O&M)
Date of decision: October 31, 2015

...Appellant

Dharambir and others

...Respondents

Dharambir and others

...Appellants

Balwinder Singh and another

...Respondents

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Mr. Sagar Aggarwal, Advocate,
for the respondents in FAO No. 1383 of 2012 and
for the appellants in FAO No. 843 of 2012.

1. This order shall dispose of the above titled first appeals as they are out of the same award and having similar set of facts and law.

2. FAO No. 1383 of 2012 is by the insurer on a contention that the deceased driver of the motor vehicle was a borrower of the vehicle and the legal representatives are making claim against the insurer of the vehicle

under Section 163-A of the Motor Vehicles Act (for short '**the Act**'). It was the contention that yet another vehicle dashed against the deceased in a rash and negligent manner and since the claimants did not know ownership details of the other vehicle which caused the accident, the claim was being pursued against the insurer of the vehicle that was owned by the person from whom the deceased had borrowed it.

3. The claim was totally mis-conceived and could not be sustained under the provision of Section 163-A of the Motor Vehicles Act. The said section provides for a structured formula and makes possible a claim to be made on a strict liability basis against any person without having to prove the negligence of the person who caused the accident. Such a provision cannot make a claim against the owner of the vehicle whose vehicle the deceased himself was driving. The only situation where a driver would obtain the benefit for the representatives would be in the manner contemplated under Section 147 of the Act that provides for a compulsory coverage of risk for an employee who is required to be compensated under the Employees Compensation Act, 1923. It is urged that there was a personal accident coverage and this again cannot provide for right of enforcement against the insurer at the instance of the person other than the person who had secured the insurance. A personal insurance cover is personal for the individual who takes the insurance and cannot be extended to a person who borrowed the vehicle. The claim in the manner drafted was not tenable in law and ought to have been dismissed.

4. The learned counsel for the respondents/claimants relies on a judgment of the Supreme Court in National Insurance Company Ltd. Versus

Sinitha and others 2012 (1) RCR (Civil) 205. That was a case relating to a claim at the instance of the representatives of the vehicle which had caused an accident by driving against a culvert. The Court, while setting out the law relating to contributory negligence and whether any claim could abate in a case made under Section 163-A of the Act, held that proof by insurer of wrongful act, neglect or default could be the basis for defeating the claim. In the same judgment, it also took note of the fact that the insurance company did not prove the relationship of the owner of the vehicle to the person who drove the vehicle. Here there is a contest by the insurer on the primary liability to a person who drove the vehicle and a claim is made by the representatives of the very vehicle which he was driving. The judgment in Sinitha's case (supra) does not give any guidance for the situation that obtains in this case. Incidentally, the correctness of the decision in Sinitha's case's case has been referred to a larger bench in United India Insurance Company Ltd. Versus Sunil Kumar and another 2014 (1) SCC 680.

5. In view of the afore-stated position, the liability cast on the insurer is erroneous and this appeal is allowed.

6. FAO No. 843 of 2012 is for enhancement of compensation. There is no scope for consideration for enhancement, for, the claim petition in the first place was flawed. Dismissed.

October 31, 2015
prem

(K.KANNAN)
JUDGE