

380.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1245 of 2003 (O&M)

Date of decision:07.01.2016

National Insurance Company Limited

... Appellant

versus

Harjit Singh and another

.... Respondents

**II. Cross Objection No.17-CII of 2004 in/and
FAO No.5016 of 2003 (O&M)**

National Insurance Company Limited

... Appellant

versus

Smt. Ram Rati and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.L.M. Suri, Senior Advocate,
with Mr. Neeraj Khanna, Advocate,
for the appellant.

None for the respondents.

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

K.Kannan, J. (Oral)

1. In both these cases, the issue before this court is a point of law and, therefore, brought together. They referred to two independent accidents and causes of action.

2. The point involved is whether the insurer would be liable for a claim under Section 163-A of the Motor Vehicles Act for a person who comes by death or injury while driving his own vehicle without the involvement of any other vehicle. Section 163-A which casts a strict liability norm and provides for application of structured formula for persons whose annual income is less than ₹40,000/- is to extend the welfare principle that persons coming within the lower bracket of income have to be assured of at least a minimum amount without compelling such a person to prove rashness and negligence of other vehicle which is involved in an accident. The scheme of compensation under the Motor Vehicles Act is on tort principle where liability is cast on proof of negligence of persons who owed a duty of care while driving a motor vehicle. Section 163-A of Motor Vehicles Act, however, is an exception in relieving the claimant of such proof. However, this ought not to be understood that a person who is a tort-feasor himself or who comes by death or injury by the use of a motor vehicle without the involvement of any other vehicle could have any claim possible before Motor Accident Claims Tribunal. This statement will again be subject to the only exception when a person who is dead or injured had held a personal accident cover and had paid premium for the same. A personal accident cover is a hybrid variety of insurance that provides a fixed sum depending on the premium paid, akin to

the life insurance policy and the motor insurance that will provide for coverage of risk for the use of a motor vehicle. In the instant two cases, admittedly, there was no personal accident cover. While in FAO No.1245 of 2003, the injured person was himself the owner, in FAO No.5016 of 2003, he was a borrower of vehicle who came by death. In either event, the determination of compensation against the Insurance Company for the injury or death respectively cannot be sustained, for, the unfortunate victims will have to bear the brunt of their own negligent act.

3. In a situation where the Insurance Company cannot be made liable under the terms of the policy, there is a minimum liability which the Motor Vehicles Act constitutes under Section 140 where all that has been seen is whether the vehicle that was involved in the accident had been insured with the particular Insurance Company. If it was in a case of injury resulting in permanent disability, the maximum compensation will be ₹25,000/- and in case of death, the maximum compensation of ₹50,000/- would require to be paid in terms of the judgment of the Supreme Court in **Eshwarappa @ Maheshwarappa and another Versus C. S. Gurushanthappa and another-2010(8) Scale 263.**

4. The awards of the court below are modified and in FAO No.1245 of 2003, the Insurance Company's liability will be restricted to ₹25,000/- with interest as granted already and in FAO

No.5016 of 2003, it is restricted to ₹50,000/- with interest as granted already. The awards passed against the Insurance Company over the above amounts stipulated under Section 140 in petition filed under Section 163-A of Motor Vehicles Act are not tenable and set aside.

5. Both the appeals are allowed to the above extent and in the light of discussions made above, in the cross objection filed in FAO No.5016 of 2003, there is no further scope for enhancement. The Cross Objection No.17-CII of 2004 filed in FAO No.5016 of 2003 is also dismissed.

(K.KANNAN)
JUDGE

07.01.2016
sanjeev