

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2458-2005 (O&M)

Date of Decision: March 17, 2016

United India Insurance Company Ltd.

...Appellant

Versus

Ajay Matta and another

...Respondents

FAO-3268-2005 (O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Sanjay Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present: Mr.Sanjiv Pabbi, Advocate,
for the appellant.

Mr.Pankaj Middha, Advocate,
for respondent No. 1 (in FAO-2458-2005).

Mr. Abhimanyu Batra, Advocate,
for respondent No. 1 (in FAO-3268-2005).

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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?*

K.KANNAN, J (Oral)

FAO-2458-2005

1) FAO-2458-2005 and FAO-3268-2005 are at the instance of a driver of the car, who was not himself owner or a paid driver and at the instance of a passenger of the car, respectively. The policy was a comprehensive policy and the driver dashed against a culvert, alleged to have been blinded by the headlights of the vehicles coming from the opposite direction. The claimant has stated that he was an income tax assessee and he has still approached the Tribunal under Section 163-A of the Motor Vehicles Act (for short 'the Act') for claim to compensation. The Insurance Company has contested the claim as not competent being outside the scale of entitlement for claimants under Section 163-A of the Act and it is also contended that a borrower of the vehicle, who has himself contributed to the accident, would have no claim under Section 163-A of the Act, both these objections have been held against the insurer and hence, the insurer is in appeal in both the cases.

2) It has been held in **Deepak Girishbhai Soni v. United India Insurance Company Ltd., Baroda (2004) 5 SCC 385** that the benefit of the Section 163-A of the Act in Schedule 2 could apply only to persons, whose annual income is less than ₹40,000/-

(Rupees Forty Thousand Only) and it shall be impermissible to deliberately scale down the amount only to bring it within the purview of the provisions. Admittedly, the claimant was an income tax assessee and his annual income was more than ₹40,000/- (Rupees Forty Thousand Only). The petition could not have been maintained. It ought to have been dismissed.

3) Learned counsel for respondent No. 1 states that compensation was awarded under the scales of Workmen Compensation Act. There is no scope for applying these provisions, when he was not a workman.

4) There is a further dimension to the untenability of the petition. A borrower of the vehicle from the owner gets no right of claim against the owner or insurer, unless the accident was on account of any latent defect in the vehicle and the owner has responsible for any accident on account of such defects. The driver driving against a culvert and coming by harm can have no trail of action, either against the owner or against the insurer. This point has been so laid down by the Supreme Court in **Ningamma and another v. United India Insurance Co. Ltd.** (2009) 13 SCC 710. The petition is bound to fail on both the counts. The award passed in favour of the claimant is erroneous and it is set aside. FAO-2458-2005 is allowed.

FAO-3268-2005

5) The objection in this appeal is similar. The claimant was earning more than ₹8,000/- (Rupees Eight Thousand Only) per month and he could not have maintained the petition under Section 163-A. I take it that the petition is filed under a wrong premise, for, as far as the passenger is concerned, the accident speaks of the negligence of the driver in a typical *res ipsa loquitur* situation. The negligence of the driver is writ large and the passenger ought to have been provided for injuries suffered in the accident. I treat it as a petition under Section 166 of the Act and allow for the retention of the award against the insurer. FAO-3268-2005 is dismissed.

March 17, 2016

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**(K.KANNAN)
JUDGE**