954.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2994 of 2005 (O&M)
Date of decision:15.02.2016

The New India Assurance Company ... Appellant

versus

Ram Niwas and another .... Respondents

II. <u>FAO No.1796 of 2005</u> (O&M)

Ram Niwas ... Appellant

versus

Rakesh Kumar and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Man Mohan, Advocate,
for Mr. Suman Jain, Advocate,
for the appellant in FAO No.2994 of 2005 and
for respondent No.2 in FAO No.1796 of 2005.

Mr. R.D. Yadav, Advocate,
for the appellant in FAO No.1796 of 2005 and
for the respondents in FAO No.2994 of 2005.

<u>K.Kannan, J.</u> *(Oral)*

1. The appeal in FAO No.2994 of 2005 is by the Insurance Company. The claimant had come by grievous injuries when he had borrowed the first respondent's vehicle and dashed against *neel gai* crossing the road. In terms of the judgment of the Supreme Court in

<u>Ningamma and another Versus United India Insurance Company Limited-2009 AIR (SC) 3056</u>, a borrower of a vehicle who suffers personal injuries could have no claim against the insurer. The only claim possible is on no fault basis under Section 140 of the Motor Vehicles Act in the light of law laid down by the Supreme Court in ***<u>Eshwarappa @ Maheshwarappa and another Versus C. S. Gurushanthappa and another-2010(8) Scale 263</u>***. The liability of the insurer shall stand restricted to ₹25,000/- only.

2. The award is modified and the liability of the insurer is restricted to ₹25,000/- with interest as awarded already. Since there is no case made that there was any latent defect in the vehicle that caused the accident, there is no scope for making the claim available even against the owner of the vehicle. The award is modified and FAO No.2994 of 2005 is allowed to the above extent.

3. The appeal for enhancement of claim cannot survive favourable consideration in terms of the reasoning adopted above. The appeal in FAO No.1796 of 2005 is dismissed.

(K.KANNAN)
JUDGE

15.02.2016
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