730.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4431 of 2010 (O&M)
Date of decision:13.01.2016

The Oriental Insurance Company Limited ... Appellant

versus

Paramjit Kaur and others .... Respondents

II. <u>FAO No.6175 of 2010</u> (O&M)

Paramjit Kaur and others ... Appellants

versus

Karam Chand and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Diwan S. Adlakha, Advocate,
for the appellants in FAO No.6175 of 2010 and
for respondents 1 to 3 in FAO No.4431 of 2010.

Mr. Jagjit Singh, Advocate,
for Mr. Ashwani Talwar, Advocate,
for the appellant in FAO No.4431 of 2010 and
respondent No.2 in FAO No.6175 of 2010.

----

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

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

1. The appeal by the Insurance Company in FAO No.4431 of 2010 is on an issue of liability. It is a case of a borrower of a

vehicle from the insured owner who was alleged to have been hit by yet another vehicle coming from opposite direction but the claim was made by the representatives of the deceased driver of the motorcycle against the insurer of the vehicle which he was riding himself. The petition had been filed under Section 163-A of the Motor Vehicles Act.

2. The borrower of a vehicle steps into shoes of the owner himself and it would leave no trail of compensation as possible against the insurer. The policy cover is only to indemnify the risk to the owner-driver which means if the owner had driven the vehicle himself, he can claim compensation to the extent provided therein. A borrower from the owner get no benefit under this clause and a clam under Section 163-A of the Motor Vehicles Act was incompetent. It has been so held in the decision of the Supreme Court in ***<u>Ningamma and another Versus United India Insurance Company Limited-2009 AIR (SC) 3056</u>***. If at all, the Insurance Company could be made liable, it is the statutory minimum under Section 140 of the Motor Vehicles Act as held by the Supreme Court in ***<u>Eshwarappa @ Maheshwarappa and another Versus C. S. Gurushanthappa and another-2010(8) Scale 263</u>***. The award passed against the insurer is set aside and restricted to the extent referred to above with interest as provided already.

3. There is an appeal for enhancement of compensation by the claimants in FAO No.6175 of 2010. There is no scope for enhancement in the light of the reasoning adopted in FAO No.4431 of 2010. The counsel relies on a judgment of Supreme Court in ***<u>National Insurance Company Limited Versus Sinitha and others-2012(2) SCC 356</u>***. Apart from the fact that the correctness of this decision itself has been put to challenge through a reference to a larger Bench, the case was with reference to a scope for considering contributory negligence even in claims under Section 163-A of the Motor Vehicles Act. It has nothing to make possible a claim against the insurer of the vehicle which the deceased himself was driving. In a situation where the policy condition was restricted to the liability of the insurer for owner-driver, which has been explained already, it shall mean owner who was driving the vehicle and not owner as well as driver.

4. The appeal by the Insurance Company in FAO No.4431 of 2010 is allowed on the above terms and the appeal by the claimants in FAO No.6175 of 2010 is dismissed.

(K.KANNAN)
JUDGE

13.01.2016
sanjeev