

769.

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

FAO No.530 of 2011 (O&M)

Date of decision:13.01.2016

Vinod Kumar

... Appellant

versus

Sajjan Kumar and others

.... Respondents

II. FAO No.7210 of 2010 (O&M)

The National Insurance Company Limited

... Appellant

versus

Sajjan Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.C. Kapoor, Advocate,
for the appellant in FAO No.7210 of 2010 and
for respondent No.3 in FAO No.530 of 2011.

Mr. Ram Pal Verma, Advocate,
for the appellant in FAO No.530 of 2011 and
for respondent No.3 in FAO No.7210 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.

K.Kannan, J. (Oral)

1. Mr. Jatinder Nara, Advocate, who is said to have appeared for the claimants is not before the court.

2. Both the appeals are connected and arise out of the same accident and they are disposed of by a common order.

3. The appeal by the insurer in FAO No.7210 of 2010 is on an issue of liability for a claim made by the representatives of the driver of a motorcycle when the owner was the pillion rider. The driver had made a claim under Section 163-A of the Motor Vehicles Act for fatal injury suffered by his own negligent driving. The borrower of a vehicle gets no right to claim compensation in terms of the decision of the Supreme Court in **Ningamma and another Versus United India Insurance Company Limited-2009 AIR (SC) 3056**. The award passed against the insurer is clearly untenable and it is set aside.

4. The owner, who was the pillion rider, has come in appeal against the assessment of compensation of ₹4,52,000/-. There is no claim possible against the owner unless the case made out is that the vehicle was in a non-motorable condition and the death was on account of inherent defect in the vehicle that caused the accident. There was no such claim made but it was a case of death occurring by the driver of the motorcycle by dashing against the side wall of a bridge on account of his own negligence. There is no scope for making the owner of the vehicle also liable. The award making the owner liable is erroneous and set aside.

5. The liability of the insurer shall, however, be restricted to no fault liability under Section 140 of the Motor Vehicles Act for the fact that the vehicle was insured in terms of the decision in **Eshwarappa @ Maheshwarappa and another Versus C. S. Gurushanthappa and another-2010(8) Scale 263.** The liability cast to the tune of ₹1 lakh on the insurer is set aside and restricted to ₹50,000/-.

6. The appeal by the insurer in FAO No.7210 of 2010 is allowed partially and the appeal by the owner in FAO No.530 of 2011 is allowed setting aside the award passed against him.

(K.KANNAN)
JUDGE

13.01.2016
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