859.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1330 of 2012 (O&M)
Date of decision:04.02.2016

National Insurance Company Limited ... Appellant

versus

Jagdish Kumar and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.R.C. Kapoor, Advocate, for the appellant.

Ms. Bhavna Grewal, Advocate, for respondent No.1.

Mr. S.K. Yadav, Advocate, for respondent No.2.

K.Kannan, J. *(Oral)*

1. The insurer is in appeal to contend that the case would require the disposal in the light of the decision of the Supreme Court in ***Ningamma and another Versus United India Insurance Company Limited-2009 AIR (SC) 3056*** that borrower of a vehicle merely stepped into the shoes of the owner and leaves no claim as possible against the insurer for his own negligence. It was a case of a 'neel' cow crossing the road and the deceased dashing against it, losing control and coming by fatal injuries. The insured was a sister of the deceased. The Tribunal has assessed a compensation of

₹ 2,12,950/- by making provision under various heads which conform to what Schedule-II provides for.

2. I cannot make the insurer liable in the light of law laid down although the petition by the claimants is that the Insurance Company did not take any specific defence regarding non-liability. It is essentially a legal defence and the tenability of the petitioner's claim itself. It required no oral evidence on the part of the insurer.

3. The counsel for the respondent states that it was comprehensive insurance and, therefore, the Insurance Company must be responsible. A comprehensive insurance does not make even the owner to be entitled to any amount against the insurer other than in a situation when there was any personal accident cover. It will again be only personal to the owner. Comprehensive insurance will provide a claim for own damage to the owner of the vehicle and not for personal injury or death for a borrower from the owner. The Insurance Company's liability shall be restricted to ₹50,000/- with interest at 9% from the date of petition till, which is possible under Section 140 of the Motor Vehicles Act and as laid down by the decision of the Supreme Court of ***<u>Eshwarappa @ Maheshwarappa and another Versus C. S. Gurushanthappa and another-2010(8) Scale 263</u>*** and the liability assessed in excess shall stand vacated.

4. The appeal by the insurer is allowed to the above extent.

5. The counsel for the appellant says that there was stay only upto ₹ 1 lakh. The Insurance Company is at liberty to apply for restitution in the manner known to law, if any excess payment had been made.

(K.KANNAN)
JUDGE

04.02.2016
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