IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5602 of 2012 (O&M)
Date of decision: 03.03.2016

Renuka Devi and others

... Appellants

versus

Rajesh Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.K. Nehra, Advocate, for
Mr. Sanjeev Kodan, Advocate for the appellants.
Mr. Gopal Mittal, Advocate for respondent No.2.

K.Kannan, J. (ORAL)

The appellant was fended off in his claim by the reference to a judgment in Ningamma and another Vs. United India Insurance Co. Ltd., 2009 AIR (SC) 3056 as operating against the claimants as representatives of the deceased who was a borrower of the vehicle and hence could not have a lawful action against the insurer of the vehicle which he was driving. The proposition is formidable for an appellant to scale over.

The liability could however be fastened in the light of the dispensation in Eshwarappa @ Maheshwarappa and another Vs. C.S. Gurushanthappa and another, 2010 AIR (SC) 2907 invoking Section 140 of the Motor Vehicles Act and making the insurer liable full on that account. The order of dismissal is set aside and the insurance company is directed to pay an amount of Rs. 50,000/- with interest @ 7.5% from the date of petition till the date of payment and the amount shall be distributed equally amongst all the claimants. If there is any minor interest involved, the share of the minors shall be kept in the bank during the respective periods of minority and release to them at the time of majority.

The award is modified and the appeal is allowed to the above extent, however reiterating the principles that a borrower of vehicle leaves no trail of claim possible against the insurer either under Section 163A or Section 166 of the Motor Vehicles Act, 1988.

(K.KANNAN)
JUDGE

03.03.2016
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