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

**FAO No. 2401 of 2015 (O&M)
Date of decision: 31.05.2016**

ICICI Lombard General Insurance Company
... Appellant

versus

Sharvan Kumar and others
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate for the appellant.

K.Kannan, J. (ORAL)

The point brought for consideration in the appeal is the entitlement of the claimants to press for consideration against the owner of the motor cycle from whom the deceased had borrowed and had received fatal injuries in a fall from the motor cycle without involvment of any other vehicle. The claim has been made under Section 163A CPC. Section 163-A relieves the person of the duty to prove the negligence of any other person who may have contributed to the accident. It cannot make possible a claim by the person who was himself responsible for the accident. The issue was brought up for consideration before the Hon'ble Supreme Court in Ningamma Vs. United India Insurance 2009 ACJ 2020 which held that a borrower who steps into the shoes of the owner has not trail of action against the insurer or the owner. This is not a case where the accident had taken place on account of any defect in the motor cycle for which the owner could be responsible. The only compensation that is possible is the statutory minimum of Rs. 50,000/- against the insurer in the manner contemplated in Eshwarappa @ Maheshwarappa Vs. C S Gurushanthappa AIR 2010 SC 2907.

The award stands modified. The compensation is scaled down to Rs. 50,000/- with interest as awarded and the entitlement will be distributed amongst the claimants.

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

(K.KANNAN)
JUDGE

31.05.2016
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