205(1)

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

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1. **FAO No.906 of 2001**
Date of Decision: 05.12.2018

The New India Assurance Co. Ltd.

Appellant

Versus

Charna Devi and others

Respondents

2. **FAO No.907 of 2001**

New India Assurance Co. Ltd.

Appellant

Versus

Jit Lal and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Paul S. Saini, Advocate
for the appellant-Insurance Company.

None for the respondents.

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AVNEESH JHINGAN, J (Oral):

The award dated 22.11.2000 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib [for brevity 'the Tribunal'] has been assailed by the Insurer of vehicle bearing registration No. HR-37-3601 [hereinafter referred to as 'offending vehicle'] i.e. The New India Assurance Company Ltd. by filing two appeals.

Both the appeals arise from same award and from the same accident, hence, these are being disposed of by a common order.

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The facts, in brief, are that a motor vehicular accident took place on 28.08.1997. Vijay Kumar and Lal Malli were going on their cycle to their house, on their way, they were hit by a rashly and negligently driven offending vehicle. As a result of the accident, they sustained injuries and lost their lives. Vijay Kumar was 19 years old and Lal Malli was 22 years old. Both were labourers. The legal heirs of the deceased filed two claim petitions under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

In the claim petitions, the service could not be effected on the driver and owner of the offending vehicle and ultimately by making a statement on 01.09.1999, claim petitions against respondents No.1 and 2 were withdrawn. The Tribunal dismissed the claim petition on 01.09.1999 against respondents No.1 and 2, on the basis of statement made, but the petition was continued against the Insurance Company.

As the claimants had withdrawn the claim petition against respondents No.1 and 2, the Tribunal ordered that ₹50,000/- each be paid to the claimants in both the claim petitions alongwith interest @ 12% per annum for no-fault liability, as accident was admitted and the offending vehicle was insured with the appellant-Insurance Company.

Aggrieved of awarding compensation for no-fault liability, the present appeal has been filed.

The contention raised by learned counsel for the

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appellant is that the Insurance Company is not liable to pay for no-fault liability.

The contention raised by learned counsel for the appellant lacks merit. Once the accident is admitted and involvement of offending vehicle is established, moreover, the offending vehicle was insured at the time of accident, as per Section 140 of the Act, the Insurer cannot be wriggle out from its liability to pay compensation for no-fault liability of ₹50,000/- each.

Reliance in this regard is placed on the decision of the Supreme Court in case of ***Eshwarappa @ Maheshwarappa and another Vs. C.S. Gurushanthappa and another 2010 (8) SCC 620.*** It was held by the Supreme Court as follows:

> *"12. Coming back to the order passed by the Tribunal, we are completely unable to appreciate the reasons assigned for denying the appellants the `no fault compensation' as provided under section 140 of the Act. The Tribunal was gravely in error in taking the view that a claim for compensation under section 140 of the Act can succeed only in case it is raised at the initial stage of the proceedings and further that the claim must fail if the accident had taken place by using the car without the consent or knowledge of its owner. Section 140 is the first section of chapter X of the Act. It is a small chapter consisting of only five sections (from 140 to 144) and has the marginal heading "Liability without Fault in Certain Cases". Section 140 reads as under:*
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> > *"140. Liability to pay compensation in certain cases on the principle of no fault.*

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(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

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(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A."

On a plain reading of the provisions it is evident that all that is required to attract the liability under section 140 is an accident arising out of the use of a motor vehicle(s) leading to the death or permanent disablement of any person. Sub-section (2) provides for a fixed amount as compensation. [In case of death, currently it is rupees fifty thousand (Rs.50,000.00) only; at the time the accident from which the appeal arises took place the fixed amount in case of death was rupees twenty five thousand (Rs.25,000.00) only]. Sub- section (3) provides that even though the death or permanent disablement resulting from the motor accident might not be due to any wrongful act, neglect or default of the owner of the vehicle, it would have no effect either on his liability or on the amount of compensation. Sub-section (4) conversely provides that the motor accident resulting in the death or permanent disablement might be entirely due to the wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim is made but that too would have no effect either on the right to receive the compensation or the amount of compensation. Sub-section (5) which begins with a non obstante clause makes it further clear

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that the liability under section 140 is independent of the liability of the owner of the vehicle to pay compensation under any other law for the time being in force. The proviso to sub-section (5), of course, provides that the amount of compensation under any other law would be reduced from the amount of compensation payable under section 140 or under section 163Aof the Act.

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15. Thus the liability arising from section 140 would almost invariably be passed on to the insurer to be paid off from the vast fund created by virtue of sections 146 and 147 of the Act unless the owner of the vehicle causing accident is guilty of some flagrant violation of the law.

In view of above discussion and keeping in view the decision of the Supreme Court, quoted above, both the appeals are dismissed.

[AVNEESH JHINGAN]
JUDGE

December 05th, 2018
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1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No

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