

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

F.A.O. No. 5556 of 2018(O&M)

Date of Decision: 05.10.2018

National Insurance Company Limited

.....Appellant.

Versus

Sonia and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Sandeep Suri, Advocate
for the appellant.

LISA GILL, J (Oral).

This appeal has been filed by the appellant-Insurance Company against the impugned award dated 19.04.2018, passed by the learned Motor Accident Claims Tribunal (for short 'MACT'), Yamuna Nagar at Jagadhri.

As per averments in the claim petition, Raj Kumar along with Sandeep Kumar were going on motorcycle bearing registration No. HR-02-AJ-5593 and the same was being driven by Sandeep Kumar and Raj Kumar was the pillion rider. At about 06.30.p.m., a Nilgai (Blue Bull) suddenly came in front of the motorcycle, due to which, their motorcycle struck with a Safeda tree standing by the road side and both of them suffered injuries. Both Raj Kumar and Sandeep Kumar died on account of the injuries received by them. D.D.R No. 6 dated 20.03.2016, was registered in this respect.

Petitions under Section 163-A of the Motor Vehicle Act (for short 'the Act') were filed seeking compensation on account of the death of Raj Kumar and Sandeep Kumar.

In respect to the death of Raj Kumar, the claimants were

awarded a sum of ₹4,36,156/-. No appeal was preferred by the insurance company *qua* the compensation awarded to the legal heirs of Raj Kumar.

In respect to the claim petition preferred by the legal heirs of Sandeep Kumar, learned tribunal rejected their claim on the ground that as Sandeep Kumar was the owner of the offending vehicle, petition under Section 163-A of the Act is not maintainable because the owner cannot be both the claimant as well as the tortfeasor. Moreover, it was observed that though there is a 'Compulsory Personal Accident Cover' for the owner driver in regard to which a premium of ₹50/- had been paid, but the term 'owner driver' means, the registered owner only. However, the claimants were held entitled to a sum of ₹50,000/- under the 'no fault liability' provided under Section 140 of the Act.

Aggrieved from the dispensation of ₹50,000/-, the present appeal has been filed.

Sole contention on which this petition has been filed by the appellant-insurance company is that the learned tribunal has erred in affording a sum of ₹50,000/- as compensation under 'no fault liability' as provided under Section 140 of the Act, as once the petition under Section 163-A of the Act was dismissed, relief could not have been afforded under Section 140 of the Act by the learned tribunal. It is thus prayed that the impugned award dated 19.04.2018 be set aside and the claim petition be dismissed.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

The Hon'ble Supreme Court in **Eshwarappa @**

Maheshwarappa and another Vs. C.S.Gurushanthappa and Anr.
2010(4) R.C.R (Civil) 102, has held that it is open for the tribunal to consider the grant of 'no fault compensation' under Section 140 of the Motor Vehicles Act, in given circumstances.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 19.04.2018 passed by the learned MACT, Yamuna Nagar at Jagadhri, which calls for interference by this Court at the instance of the appellant.

Appeal is accordingly dismissed with no order as to costs.

05.10.2018

[LISA GILL]
Judge

s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.