

472

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

**FAO No.37 of 2009
Date of Decision : 17.05.2019**

Bajinder Singh

Appellant

Versus

Surender Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. D.S. Adlakha, Advocate
for the appellant.

Mr. Punit Jain, Advocate
for respondent No.2.

AVNEESH JHINGAN, J (Oral)

The award dated 08.09.2007 has been assailed by the claimant seeking enhancement of compensation awarded under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'] for the injuries sustained by him in the accident.

Learned counsel for the parties are *ad idem* that a connected appeal arising out of the same accident i.e. FAO No.4689 of 2007, filed by the insurer of the motorcycle bearing registration No. HR-05Q-0556 [hereinafter referred to as 'offending vehicle'], was allowed vide order dated 30.09.2010, whereby it was held as under:-

“6. If the policy merely provided for a personal accident cover for owner/driver, a person who borrows such a vehicle cannot obtain any right of action against the insurer. The indemnity to a driver, which the terms of the policy

contemplates is to provide a cover for his act that results in death or injury to any third party. A driver of a vehicle, who is involved in the accident is not to be treated as third party and therefore, I am of the view that the claimant is not entitled to make such a successful claim against the insurer of the vehicle, which he was driving.

7. The award issued in favour of the claimant and against the insurer is not tenable in law. The award is set aside and the appeal is allowed.”

In that appeal, it was held that the borrower of the offending vehicle cannot have right of action against the insurer. As the claim petition was filed under Section 163-A of the Act, there is hardly any scope for enhancement. Moreover, the offending vehicle was owned by brother of the claimant. Nothing survives in the appeal.

The appeal is dismissed accordingly.

[AVNEESH JHINGAN]
JUDGE

May 17, 2019

pankaj baweja

- | | | |
|-------------------------------|---|-----|
| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | No |