

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

1. **FAO No. 8653 of 2015(O&M)**
Date of Decision: September 04 , 2019.

Jai Bhagwan APPELLANT(s)
Versus
Parsani Devi and others RESPONDENT (s)

2. **FAO No. 8654 of 2015(O&M).**

Jai Bhagwan APPELLANT(s)
Versus
Bhateri and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Harish Nain, Advocate
for the appellant in both the appeals.

Mr. Ashok Kumar Sharma (Bhana), Advocate
for respondents No.1 and 2 in FAO No.8653 of 2015 and
for respondent No.1 in FAO No.8654 of 2015.

Mr. V.D.Sharma, Advocate
for respondent No.3 in FAO No.8653 of 2015 and
for respondent No.2 in FAO No.8654 of 2015.

Mr. D.P. Gupta, Advocate
for Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This order shall dispose of FAO No.8653 of 2015 (Jai Bhagwan v. Parsani Devi and others) and FAO No.8654 of 2015 (Jai Bhagwan v. Bhateri and others).

Both the appeals have been filed by the Driver of the offending vehicle, challenging award dated 25.05.2015 passed by the learned Motor Accident Claims Tribunal, Jind (for short, the 'Tribunal') whereby appellant-Driver has been held liable jointly and severally to pay compensation to the claimants.

The only question which arises for consideration in both the appeals, is whether the Driver of an offending vehicle can be fastened with the liability to pay compensation to the claimants in an appeal under Section 163A of the Motor Vehicles Act, 1988 (for short, the 'Act'). Section 163A of the Act reads as under:-

“163A. Special provisions as to payment of compensation on structured formula basis.

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. – For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

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

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

Perusal of the aforesaid, permits of no doubt that Section 163A of the Act is a special provision for compensation to be awarded on a structured formula basis. In the case of an application under Section 163A of the Act, claimant is not obligated to prove the factum of rashness or negligence on the part of the driver of a vehicle involved in the occurrence. Driver of the vehicle is neither required to be impleaded as a party nor can be fastened with liability to

pay compensation. It is the owner of the offending motor vehicle or the authorized insurer who is liable to pay compensation to the claimants in the case of death or permanent disablement due to accident arising out of the use of their motor vehicle.

In this view of the matter, I find merit in the contention of learned counsel for the appellant that the learned Tribunal has seriously erred in holding the appellant jointly and severally liable to deposit the compensation alongwith the owner of the offending vehicle. Accordingly, direction of the learned Tribunal holding the appellant liable to pay compensation is unsustainable, hence is set aside. The owner of the vehicle in this case has not filed any appeal. It is the said owner of the motor vehicle who is liable to pay the compensation in view of the categorical provision of law.

For the foregoing reasons, both appeals are allowed. Award dated 25.05.2015 passed by ld. Tribunal is set aside to the extent of holding the appellant liable to pay compensation.

September 04 , 2019.
Harish Kumar

(LISA GILL)
JUDGE

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