

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

FAO No.4803 of 2017 (O&M)

Date of decision: 16.12.2019

Pinki and another

....Appellants

Versus

Paramjit Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jyoti Parshad Sharma, Advocate,
for the appellant.

RITU BAHRI J. (Oral)

CM No.14404-CII of 2017

For the reasons mentioned in the application, same is allowed and delay of 04 days in filing of the appeal is condoned.

FAO No.4803 of 2017

This appeal has been filed by claimant-appellants seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal'), vide award dated 12.11.2016 on account of the injuries received by him in a motor vehicular accident which took place on 22.06.2014.

Brief facts of the case are that on 22.06.2014, Rajesh @ Amarjit (since deceased) along his brother Vishal was going from village Sirasala towards Pipli on a motorcycle bearing registration No. HR-07-M-5532, which was owned by their maternal uncle. Rajesh was driving the said motorcycle. When they reached at Sirsala-Pipli road near Sirsala turn on the G.T.Road, some unknown canter came from the opposite side, which

coming on the wrong side, Rajesh alias Amarjit, at once, took his motorcycle on the *katcha* portion of the road and in that process, it struck against the harrow of a tractor bearing registration No. HR-07-M-7980, with which, respondent No.3 was ploughing the fields by the side of road. Rajesh Kumar @ Amarjit came under the harrow of the tractor and they both received multiple and grievous injuries. They were taken to Apna Hospital, Kurukshetra, from where Rajesh alias Amarjit was referred to PGI, Chandigarh, whereas Vishal was taken to Siri Hari Hospital, Karnal. Unfortunately, Rajesh Kumar @ Amarjit succumbed to the injuries. With regard to the accident, FIR No.258 dated 06.07.2014, under Sections 279/337/338/304-A IPC was registered at Police Station, Sadar, Thanesar. Consequently, claimant-appellant filed a claim petition under Section 163-A of the Motor Vehicle Act before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that respondent Nos.3 to 5 could not be held liable to pay any compensation to the claimants on account of death of Rajesh as the injuries on his person and his consequent death was having no direct relation to the motorcycle being driven by him, which was dashed into the tractor being driven by respondent No.3. However, exact cause of the same was that Rajesh, while driving the motorcycle, on seeing an unknown vehicle coming from the opposite side at a high speed, rashly and negligently, in the process of taking his motorcycle on the *katcha* portion of the road, somehow was not able to control the movement of the motorcycle, which thereafter, accidentally moved into the adjoining field where tractor bearing registration No. HR-07-M-7980 was being driven by respondent No.3. It was so happened by chance. Respondent No.3 i.e. driver of the said

tractor had no occasion to expect that anything of that sort would happened while ploughing his fields. It has further been observed that the motorcycle in question belonged to the maternal uncle of deceased-Rajesh and injured Vishal, which was borrowed by them from him. Therefore, Rajesh-deceased had stepped into the shoes of respondent No.1-Paramjit. While relying upon the judgment passed in **Nigamma & another vs. United India Insurance Co. Ltd.**, 2009 (8) JT 262, the Tribunal held that claimants, who are LR's of deceased, were not entitled to claim compensation under Section 163-A of the Act because the deceased person had stepped into the shoes of the owner and no compensation was admissible to his LR's. Hence, petition filed by him under Section 163-A of the Act is not maintainable. However, the claim petition was partly allowed with costs only to the extent of Rs.50,000/- on account of no fault liability under Section 140 of the Motor Vehicle Act, 1988, which shall be shared by the claimants equally.

After hearing learned counsel for the appellants and going through the impugned award, it is apparent that deceased-Rajesh was driving the motorcycle, after borrowing the same from his maternal uncle and thus, he stepped into the shoes of the owner. As per judgment passed in **Ningamma's** case (supra), where a person drives a motorcycle after borrowing it from its owner and meets with an accident and suffers permanent disablement or dies, then he or his LR's are not entitled to claim compensation under Section 163-A of the Act. Thus, as per this judgment, the claimants were rightly not held entitled to claim compensation under Section 163-A of the Act. However, compensation of Rs.50,000/- has rightly been awarded by the Tribunal under Section 140 of the Motor Vehicle Act on account of no fault liability. In these circumstances, no

modification is required to be made in the impugned award. The evidence has been appreciated in the right perspective.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

16.12.2019

ajp

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No