

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

334

FAO-3811-2005

Date of Decision : 13.09.2022

The New India Assurance Company Ltd.

---Appellant

versus

Devinder Kaur and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ashwani Talwar, Advocate
for the appellant-insurer.

None for the respondents.

JAGMOHAN BANSAL, J. (ORAL)

1. The appellant-insurer through instant appeal is seeking setting aside of award dated 02.03.2005 passed by Motor Accident Claims Tribunal, Rupnagar (for short 'Tribunal') whereby learned Tribunal has awarded a sum of Rs.3,75,000/- along with interest @ 6% per annum from the date of filing of the claim petition.

2. The facts emerging from record and necessary for the adjudication of present appeal are that on the intervening night of 24/25.9.2002, Balwinder Singh (deceased) was going from Chandigarh to Mani Majra in a car bearing registration No.CH-7742. He was driving the aforesaid car. A truck bearing registration No.HR-38-BG-3717 was lying parked on the wrong side of the car. It was about 11.50 p.m. and deceased could not see parked truck and struck the aforesaid truck from back side. Balwinder Singh suffered multiple injuries and died on the spot.

3. The respondents-claimants filed a claim petition under

Section 163-A of Motor Vehicles Act, 1988 (for short '1988 Act') seeking compensation on account of death of Balwinder Singh. In the claim petition, Manmohan Singh son of Rattan Singh, owner of the car as well insurer was made respondent and claimants before Tribunal did not array owner/driver of truck as respondent.

4. Learned Tribunal after considering entire facts and circumstances concluded that claimants are entitled to the compensation to the tune of Rs.3.75 lakhs.

5. The insurer has come in appeal before this Court seeking setting aside of award on the ground that under Section 163-A of 1988 Act claim could not be filed against owner of the vehicle and in the present case, claim was preferred against owner of car and deceased was the borrower of the car. As per law settled by Hon'ble Supreme Court, claim petition under Section 163-A of 1988 Act is not maintainable, if claim is lodged by owner or borrower against the insurer of their own vehicle instead of insurer of any other vehicle.

6. The present appeal was listed for hearing on 05.09.2022 and nobody appeared on behalf of the respondents and today, there is no change in the situation.

7. Learned counsel for appellant pointed out that as per his instructions, a sum of Rs.2 lakhs has already been released to claimants and on account of law settled by Hon'ble Supreme Court, it seems that claimants have lost their interest to contest the appeal.

8. Learned counsel for the appellant submitted that as per judgement of Hon'ble Supreme Court in **Ramkhiladi and another**

vs. United India Insurance Company and another (2020) 2 SCC

550 and judgment of this Court in **ICICI Lombard General Insurance Company Ltd. vs. Ram Niwas, FAO No.2401 of 2013, decided on 12.09.2022**, the claimants were not entitled to compensation because deceased was borrower of the car and claim was filed against owner of the car. The claimants could file claim against owner of the truck whereas they have filed claim against insurer as well as owner of the car.

9. Inspite of proper opportunity, the respondents are not appearing and the appeal is of the year 2005, thus, I have left with no other option except to pass order *exparte*. In view of judgements of Hon'ble Supreme Court in **Ramkhiladi's case (supra)** and judgment of this Court in **Ram Niwas's case (supra)** which is based upon the judgments of Hon'ble supreme Court, I am of the opinion that present appeal deserves to be allowed. However, I find that as per statement of counsel for the appellants, a sum of Rs.2 lakhs has already been released to claimants and it would be difficult to recover any amount, if compensation awarded is reduced below a sum of Rs.2 lakhs. Therefore, keeping in view the facts and circumstances of the case, I do not find it appropriate to reduce amount of compensation awarded below Rs.2 lakhs.

10. The appeal is disposed of in the above-stated terms.

(JAGMOHAN BANSAL)
JUDGE

13.09.2022
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No