

FAO-1031-2012
FAO-2467-2012

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

**FAO-1031-2012 (O&M)
Date of Decision: 19.09.2022**

NATIONAL INSURANCE COMPANY LTD.

..... Appellant

Versus

JARNAIL SINGH AND ANOTHER

..... Respondents

WITH FAO-2467-2012

JARNAIL SINGH

..... Appellant

Versus

AMRIT PAL SINGH AND OTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Rahul Pathania, Advocate
for the appellant in FAO-1031-2012.

Mr. Gurinderjit Singh, Advocate
for the appellant in FAO-2467-2012.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order FAO-1031-2012 and FAO-2467-2012 arising from same accident and award dated 02.01.2012 are adjudicated.

2. The facts emerging from record are that on 23.06.2007, the appellant-Jarnail Singh (FAO-2467-2012) was travelling in Maruti car bearing registration No.CH-03-H-2842. As per claim of the appellant when he reached near village Jansala on Chandigarh-Rajpura Road, his vehicle was hit by unknown vehicle and driver of unknown vehicle

escaped from the place of accident. The appellant suffered injuries and became unconscious. The appellant filed a petition under Section 163-A of the Motor Vehicle Act, seeking compensation on account of injuries suffered by him. It is apt of mention here that appellant filed a claim petition against the owner of the car bearing registration No.CH-03-H-2842, which the appellant was driving as borrower of the vehicle. The appellant was neither owner nor permanent/hired driver of the owner of the vehicle. The appellant was just borrower of the vehicle and he did not file petition against insurer/owner of any other vehicle. Learned Tribunal vide award dated 02.01.2022 awarded a sum of Rs.1,01,524/- on account of injuries suffered by appellant. The appellant-claimant is seeking enhancement of compensation whereas insurer has filed appeal (FAO-1031-2012), seeking setting aside of award on the ground that appellant-claimant was borrower of the vehicle and as per judgment of Hon'ble Supreme Court in **Ram Khilari vs State Of Rajasthan AIR 1999 SC 1002**, the appellant being borrower of the vehicle was not entitled to compensation under Section 163-A of the Act.

3. The conceded position emerging from record and arguments of both the sides is that the appellant has not filed petition against owner/insurer of any vehicle except the owner/insurer of the vehicle which he was driving. The appellant was neither owner nor hire driver of the vehicle. The appellant was borrower of the vehicle and has filed claim petition against the insurer of the vehicle which he was driving. It stands settled that petition under Section 163-A of the Act, is not maintainable against the insurer of the vehicle which owner or borrower

is driving at the time of accident. Learned counsel for respondent-Insurer fairly conceded that as per terms of the policy a sum of Rs.25,000/- alongwith interest may be awarded to the appellant-claimant.

4. Faced with the situation, counsel for the appellant expressed his inability to controvert the afore-cited judgment especially its applicability in the present facts and circumstances.

5. Considering arguments of both sides, the judgment of Hon'ble Supreme Court and facts obtained from record, the appeal of the claimant-Jarnail Singh deserves to be dismissed and accordingly dismissed. Appeal of insurer deserves to be partially allowed and accordingly allowed. The amount of compensation awarded by learned Tribunal is reduced from Rs.1,01,524/- to Rs.25,000/-. The insurer shall make payment within four weeks from today alongwith interest @ 9%.

(JAGMOHAN BANSAL)

JUDGE

19.09.2022

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>