

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-148-2012 (O&M)

Date of decision: 23.04.2018

Oriental Insurance Co. Ltd.

..... Appellant

Versus

Raj Kumari and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

**PRESENT:** Mr. Vinod Chaudhari, Advocate  
for the appellant-Insurance Company.

Ms. Ekta Thakur, Advocate for the respondents.

**RAMENDRA JAIN, J. (ORAL)**

1. Through this appeal the appellant-Insurance Company has laid challenge to the impugned Award dated 08.10.2011 of the Motor Accidents Claims Tribunal, Chandigarh (for short-'the Tribunal') awarding compensation of ₹ 1,81,000/- to claimant-respondents No. 1, 3 and 4, jointly and severally against the death of Rohit Grover, in a motor vehicular accident.

2. In nutshell, on 26.04.2009, deceased-Rohit Grover while driving the motor-cycle bearing registration No. CH-04-E-8156, of his grand-father/respondent No. 5-Madan Lal, met with accident and succumbed to his injuries on the next day. In a claim petition filed by respondent-claimants, under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), the learned Tribunal after holding trial awarded compensation, as aforesaid vide the Award impugned herein.

National Insurance Company Ltd. Vs. Sinthia and others, 2012 (2) SCC 356 and that of Karnatka High Court in Appaji (deceased by L.Rs.) Vs. M. Krishna Major and another, 2004 AIR Kar R 945, learned counsel for the appellant-Insurance Company contends that it is a unique type of case, where the grand-mother/respondent No. 1-Raj Kumari, had filed claim petition against her husband-respondent No. 5, for the death of her grand-son-Rohit Grover, under Section 163-A of the Act. He further contends that grand-father of the deceased though was owner of the motor-cycle involved in the accident, in which his grand-son-Rohit Grover died cannot be considered a third party. The learned Tribunal has erred in granting compensation to the respondent-claimants by treating respondent No.5-grand-father of the deceased as third party.

4. On the other hand, learned counsel for the respondent-claimants vehemently opposing the aforesaid submissions of learned counsel for the appellant contends that motor-cycle in question was covered under comprehensive policy at the time of accident. Therefore, the question of third party does not arise at all.

5. This Court has given anxious consideration to the submissions made by learned counsel for both the sides.

6. Learned counsel for the appellant-Insurance Company has not been able to dispute that the motor-cycle involved in the accident was not covered under package comprehensive policy. He has not been able to prove any document to show that the motor-cycle in question was only insured as “act” for third party claim. Since it was a package policy, the learned Tribunal in the impugned Award referring to the judgment of this Court as well as that of Delhi High Court, has rightly held that a

comprehensive/package policy of private vehicle covers the occupant and there is no need for the Tribunal to go into the question whether the Insurance Company is liable to compensate for death or injury of a pillion rider on a two wheeler or the occupants of a private car.

7. From judgment of Hon'ble Supreme Court in **National Insurance Company Ltd.'s case (supra)**, referred by learned counsel for appellant-Insurance Company, it is not clear as to whether the insurance policy was a composite package or comprehensive or the act only, inasmuch, as no complete copy of the same was produced. Likewise in **Appaji (deceased by L.Rs.) case (supra)**, the deceased-insured was driving the scooter at the time of his death whereas in the instant case, insured is the grand-father of deceased.

8. In view of the discussion made above, there is no merit in the instant appeal. However, since the claim petition was filed by the respondent-claimants under Section 163 of the Act, therefore, the learned Tribunal has erred in granting ₹3200/- towards funeral expenses and ₹ 5000/- towards loss of love and affection which could not have been more than ₹ 4500/- under Schedule II of the Act. Therefore, the impugned Award is modified and the amount of compensation is reduced from ₹ 1,81,000/- to ₹ 1,77,300/- (181000+4500-8200=177300) to be payable to the respondent-claimants No. 1, 3 and 4. The instant appeal stands disposed of, accordingly.

**April 23, 2018**

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**( RAMENDRA JAIN )  
JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable**

**Yes/No**