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

FAO No.59 of 2013 (O&M)
Date of Decision: May 04, 2018.

National Insurance Company Limited
..........APPELLANT(s).

VERSUS

Kashmir Kaur and others
........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gopal Mittal, Advocate
for the appellant (s).

Mr. Vipin Mahajan, Advocate
for respondents No.1 to 5.

Mr. Vishal Munjal, Advocate
for respondent No.6.

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SURINDER GUPTA, J.

This is appeal by National Insurance Company Limited against the award dated 04.09.2012 passed by the Motor Accident Claims Tribunal, Gurdaspur (later referred to as ‘the tribunal’), vide which the tribunal has awarded a compensation of ₹2,88,000/- for the death of Sat Pal (later referred to as 'the deceased'), in a motor vehicle accident, which took place on 19.01.2011 with motorcycle bearing registration No.PB-06J-7301 (later referred to as ‘the offending vehicle’).

As the only issue involved in this appeal relates to quantum of compensation as awarded by Tribunal, detailed facts of the case are being skipped for the sake of brevity.

Learned counsel for the appellant has argued that the motorcycle on which the deceased was travelling, was owned by respondent No.1. As per the insurance policy, no liability of the appellant is attracted for grant of compensation to the driver of a motorcycle. In support of his contention, learned counsel for the appellant has referred to Two-wheeler Package Policy Conditions Ex.RW1/2, which says that the liability of the insurance company is attracted when the owner-driver is a registered owner of the vehicle insured. In support of his contention, he has referred to Section 3 of the Two-wheeler Package Policy Conditions, which reads as follows:-

> **"SECTION III - PERSONAL ACCIDENT COVER FOR OWNER-DRIVER**
>
> Subject otherwise to the terms exceptions conditions and limitations of this policy the Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle, in direct connection with the vehicle insured or whilst mounting into/dismounting from or travelling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

Sr. No.	**Nature of Injury**	**Scale of compensation**
i.	Death	100%
ii.	Loss of two limbs or sight of two eyes or one limb and sight of one eye.	100%
iii.	Loss of one limb or sight of one eye	50%
iv.	Permanent total disablement from injuries other than named above.	100%

Provided always that

A) compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs. 1 Lakh during any one period of insurance.

B) no compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

C) Such compensation shall be payable directly to the insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the insured.

3) This cover is subject to

(a) the owner-driver is the registered owner of the vehicle insured herein;

(b) the owner-driver is the insured named in this policy.

(c) the owner-driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident."

I find no merits in the submission of learned counsel for the appellant, firstly, because the package policy conditions Ex.RW1/2 is not proved to be part of the policy, copy of which has been placed on file as Ex.A3 and secondly, policy had insured owner-driver and the driver has been defined in the policy itself as follows:-

"**Driver:** Any person including insured. Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from Holding or obtaining such a licence. Provided also that the person holding an effective learner's licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicle Rules, 1989."

On perusal of the terms laid down in the policy itself, it is any person/injured who possesses effective driving licence at the time of the accident, falls within the definition of driver. This definition has been given in context of the insurance of owner-driver.

In view of the above term in the insurance policy, Two-wheeler Package Policy Conditions are not attracted to the present case. Even otherwise, there is no evidence that the insured was apprised of these conditions or supplied the copy of these conditions at the time of policy.

No other argument has been advanced.

As a sequel of my above discussion, this appeal has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

May 04, 2018.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No