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

FAO No.5947 of 2012 (O&M)

Date of decision : 24.10.2016

National Insurance Company Ltd.

......Appellants

Versus

Hari Mohan and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. D.P. Gupta, Advocate for appellant-Insurance Company.

Mr. Ramender Chauhan, Advocate for respondent No.1-claimant.

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DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-National Insurance Company Limited (respondent No.2 in the claim petition) against the award dated 06.09.2012 passed by the learned Motor Accidents Claims Tribunal, Jind (hereinafter called the “Tribunal”), vide which though the claim petition filed by respondent No.1-claimant Hari Mohan under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter called the “Act”) has been held to be not maintainable, yet he has been awarded compensation to the tune of ₹1,00,000/- under the personal accident cover on account of the injuries suffered by him in the motor vehicular accident, which took place on 08.08.2010.

2. I have heard learned counsel for the parties and gone through the record of the case meticulously.

3. Learned counsel for the appellant-Insurance Company contended that Balbir Singh the father of respondent No.1-claimant was the registered owner of the motorcycle bearing registration No.HR-31F-4293 involved in the accident and insured with the appellant-Insurance Company. He contended that the learned Tribunal has held that as the claimant has borrowed the motorcycle owned by his father so his claim petition under Section 163-A of the Act was not maintainable. However, he has been wrongly awarded the compensation to the tune of ₹1,00,000/- under the personal accident cover. He contended that the compensation under personal accident cover can only be granted to the registered owner who is himself driving the vehicle. Admittedly, claimant Hari Mohan was not the registered owner, so as per the terms and conditions of the insurance policy and the India Motor Tariff regulations, he was not entitled for compensation under personal accident cover. To support his contentions, he relied upon cases ***Sushila and others Vs. Sh. Pankaj Mahajan and another 2013 (1) PLR 715, Cholamandlam MS General Insurance Company Limited Vs. Smt. Ramesh and others FAO No.3764 of 2010 decided on 14.05.2014*** and ***M/s Reliance General Insurance Company Vs. Ranjit and another 2016 ACJ 1050***.

4. On the other hand, learned counsel for respondent No.1-claimant contended that the claimant is the son of the registered owner of the vehicle. The insurance policy was comprehensive policy. He has stepped

into the shoes of the owner by operating the vehicle, so he cannot be treated to be the third party and will be entitled to compensation under the personal accident cover. To support his contentions, he relied upon cases ***New India Assurance Company Ltd. Vs. Umesh Kumari and others 2010(1) RCR (Civil) 669*** and ***Bajaj Allianz Insurance Co. Limited Vs. Poonam and others 2015(2) PLR 235***.

5. Thus, he contended that there is no illegality in the impugned award.

6. I have duly considered the aforesaid contentions.

7. Respondent No.1-claimant Hari Mohan has filed the claim petition under Section 163-A of the Act for grant of compensation on account of the injuries suffered by him in this accident. As per the admitted facts, the claimant has borrowed the motorcycle bearing registration No.HR-31F-4293 owned by his father Balbir Singh. It is further the case of the claimant that on 08.08.2010 he was moving the aforesaid motorcycle for going to village Naraingarh. Due to the headlights of TATA Sumo vehicle coming from the opposite direction he unfortunately hit a bullock-cart moving ahead of the motorcycle, which resulted into the accident and consequent injuries on his body. Thus, it evident from the facts of the case that Balbir Singh the father of the claimant was the registered owner of the motorcycle in question. The claimant has borrowed the motorcycle of his father and was driving the same at the time of the accident.

8. Ex.R2 is the copy of the insurance policy. The Liability Premium Computation provided in the insurance policy is as under:-

B. Liability Premium Computation (Section II) in Rs.

Basic Premium Including Premium for TPPD		
Vehicle	:	300.00
CNG/LPG/Bi-Fuel Kit	:	0.00
Add		
a) Compulsory PA Cover (Owner Driver)	:	50.00
b) Optional PA Cover (Un Named Driver)	:	0.00
c) Optional PA Cover Pillion Rider)	:	0.00
Legal Liability	:	
d) Legal Liability Cover (Paid Drivers, Cleaners)	:	0.00
e) Legal Liability Cover (Other than Paid Drivers, Cleaners)	:	0.00
Total Liability Premium (B)	:	350.00
Total Premium (A + B)	:	850.00
For any other extra	:	0.00
Add Service Tax	:	88.00
Gross Premium	:	938.00

9. The aforesaid portion of the policy shows that the insurer has paid the premium of ₹50/- for compulsory personal accident cover (Owner Driver). No premium has been paid for optional personal accident cover (Unnamed Driver) and Pillion Rider. So, the personal accident cover was only available to the Owner-Driver.

10. The India Motor Tariff regulations are issued by the Tariff Committee, which have statutory force. The grant of the personal accident cover is governed by General Regulation No.36 which reads as under:-

> "**GR.36.** *Personal Accident (PA) Cover under Motor Policy.* (not applicable to vehicles covered under Section E, F and G of Tariff for Commercial Vehicles)
>
> *A. Compulsory Personal Accident Cover for Owner-Driver*
>
> Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an

"effective" driving license is termed as Owner-Driver for the purposes of this section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/ dismounting from or traveling in the insured vehicle as a co-driver.

NB. This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective 18 driving license. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving license. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A. cover for the owner - driver should not be charged and the compulsory P. A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her.

TYPE OF VEHICLES	CAPITAL SUM INSURED (Rs.)	PREMIUM (Rs.)	COVER
Motorised Two Wheelers	1 lakh	50/-	i) 100% of CSI for Death, Loss of of Two Limbs or sight of both eyes or one limb and sight of one eye. ii) 50% of CSI for Loss of one Limb or sight of one eye. iii)100% for Permanent Total Disablement from injuries other than named above.
Private Cars	2 lakhs	100/-	i)100% of CSI for Death, Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii)50% of CSI for Loss of one Limb or sight of one eye. iii)100% for Permanent Total Disablement from injuries other than named above.
Commercial vehicles	2 lakhs	100/-	i) 100% of CSI for Death,Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii) 50% of CSI for Loss of one Limb or sight of one eye. iii)100% for Permanent Total Disablement from injuries other than those named above.

B. *Optional Personal Accident Cover for persons other than Owner-Driver*

The cover under this section is limited to maximum Capital Sum Insured (CSI) of Rs. 2 lacs. per person.

Cover is available only in respect of the following persons:-

1. Private Cars including three wheelers rated as Private cars and motorized two wheelers with or without side car (not for hire or reward): For insured or any named person other than the paid driver and cleaner.

Endorsement IMT - 15 is to be used.

2. Private Cars, three wheelers rated as Private cars and Motorized Two Wheelers (not used for hire or reward) with or without side car : For unnamed passengers limited to the registered carrying capacity of the vehicle other than the insured, his paid driver and cleaner.

Endorsement IMT - 16 is to be used.

3. In respect of all classes of vehicles: For paid drivers, cleaners and conductors.

Endorsement IMT - 17 is to be used.

4. Motorized Two Wheelers with or without side car (used for hire or reward): For unnamed hirer/ driver.

Endorsement IMT - 18 is to be used.

DESCRIPTION OF BENEFITS	**% OF CAPITAL SUM INSURED**	**PREMIUM FOR EVERY UNIT OF CSI OF Rs.10,000/- OR PART THEREOF (IN Rs)**		
		Pvt.Car	**Mot. Two Wheeler**	**Com.Veh.**
i) Death only	100%	5	7	6
ii)Loss of Two Limbs or sight of two eyes or one limb and sight of one eye	100%	5	7	6
iii) Loss of one Limb or sight of one eye	50%	5	7	6
iv) Permanent Total Disablement from injuries other than named above	100%	5	7	6”

11. As per the aforesaid provisions of the General Regulation No.36 the personal accident cover is available only to the registered owner in person where he/she holds an effective driving licence. The reference to the owner-driver mentioned in the aforesaid regulation must be understood as owner who is capable of driving and who was driving the vehicle at the relevant time. It cannot be understood as owner or driver.

12. It is further evident from the aforesaid regulation that owner-driver should be duly licensed to drive the vehicle. Consequently, a person who is not the registered owner of the vehicle is not covered for personal accident cover. Reference can be made to cases ***Sushila and others Vs. Sh. Pankaj Mahajan and another*** (supra), ***Cholamandlam MS General Insurance Company Limited Vs. Smt. Ramesh and others*** (supra) ***M/s Reliance General Insurance Company Vs. Ranjit and another*** (supra). Reference can also be made to cases ***The Oriental Insurance Co. Ltd. Vs. Darshani Devi @ Pinki and others 2014(3) PLR 226*** and ***United India Insurance Co. Ltd. Vs. Vijayarajan and other 2010 ACJ 280*** a Division Bench judgment of Hon'ble Kerala High Court.

13. The insurance policy Ex.R2 shows that the premium of ₹50 has only been paid for compulsory personal accident cover for owner-driver. As already discussed, this term "owner-driver" will mean the registered owner who is capable of driving the vehicle and was driving the vehicle at the time of the accident. The family members of the registered owner shall not be covered under this term. The insured in this case has not paid any premium for optional personal accident cover of unnamed driver

and pillion rider. So, the claimant was not entitled for personal accident cover.

14. Cases relied upon by learned counsel for respondent No.1-claimant are of no help to him because in both those cases the provisions of General Regulations of the India Motor Tariff were not taken note of.

15. Consequently, the learned Tribunal has wrongly awarded a sum of ₹1,00,000/- to respondent No.1-claimant Hari Mohan under the personal accident cover. At the most he can be awarded ₹25,000/- under no fault liability.

16. Thus, keeping in view my aforesaid discussion the present appeal is hereby allowed. The impugned award dated 06.09.2012, passed by the learned Tribunal is hereby set aside. However, respondent No.1-claimant Hari Mohan shall only be entitled to a sum of ₹25,000/- under no fault liability.

24.10.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No