In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 5832 of 2011 (O&M)
Date of Decision: 05.5.2017

United India Insurance Company Limited ......Appellant

Versus

Sumitra and another ....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajesh K. Sharma, Advocate
for the appellant.

None for the respondents.

****

ANITA CHAUDHRY, J

This appeal is by the insurance company seeking discharge of their liability placed upon them by the Motor Accident Claims Tribunal, Hisar.

A petition under Section 163-A of the Motor Vehicles Act was filed by Sumitra, mother of Mohit, who died in a vehicular accident which occurred on 29.12.2007. The vehicle was driven by Mohit, with his father-respondent No. 1 on the pillion. A cow suddenly appeared in front of the motor-cycle. In order to avoid the accident, Mohit applied brakes and the motor cycle dashed against the cover of a manhole and suffered injuries. He died later on account of the injuries. The insurance company took the plea that they were not liable to pay any amount as the deceased was a borrower of the motor cycle from the owner. The Tribunal held that an extra premium had been paid for covering the personal insurance of the owner to the extent of Rs. 1,00,000/- and the borrower would step into the shoes of the owner. Therefore, the insurance company would have to reimburse and awarded a sum of Rs. 1,00,000/- to be paid by the insurance company.

Aggrieved by the order, the insurance company has come up in an appeal.

It has been urged by the appellant that they were not liable to reimburse the representative of the owner and had the owner suffered injuries or had died in the accident only then they could be asked to pay the compensation. It has been urged that the premium was paid for the owner-driver and it has been clarified in numerous judgments that the description owner-driver would mean owner having an effective driving licence and not any other person. The counsel refers to the judgment reported as ***Oriental Insurance Company Limited versus Rashmi and others, MACP. APP. 691/2012 decided on 16.11.2012.*** It would be relevant to quote para 7 and 8 of the judgment which read as under:-

> *"7. In the instant case, the deceased was not a third party. He himself was driving the two-wheeler which he borrowed from the Second Respondent. A perusal of the Insurance Policy would show that a premium of ₹ 50/- was charged towards personal accident cover for the owner-driver. GR 36 under the Motor Policy(Tariff Advisory Committee Regulation for Transaction of Motor Insurance in India) deals with the coverage of owner driver, which is extracted hereunder:*
>
> > ***"GR.36. Personal Accident (PA) Cover under Motor Policy*** *(not applicable to vehicles covered under Sections 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 licence 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 travelling 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 driving licence. 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 licence. 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.

The scope of the cover, Capital Sum Insured (CSI) and the annual premium payable under this section are as under: -

TYPES OF VEHICLES	**CAPITAL SUM INSURED (₹)**	**PREMIUM (₹)**	**COVER**
Motorised Two Wheelers	1 Lakh	50/-	i) 100% of CSI for Death, Loss of Two Limbs or sight of both eyes or one limb and sight of one eye. ii) 100% from Permanent Total Disablement for 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) 100% from Permanent Total Disablement for injuries other than named above.
Commercial Vehicles	2 lakh	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) 100% from Permanent Total Disablement for injuries other than named above.”

8. Thus, it would be seen that the owner-driver is the person who is the registered owner and who is driving the vehicle himself. Since the deceased was not the owner, his legal representatives were not entitled to the compensation of ₹ 1,00,000/- meant under Personal Accident cover for the owner driver. Anybody driving the vehicle with or without permission of the owner cannot be taken as owner driver. Thus, in this case, neither the compensation towards the third party risk was payable as the deceased was not a third party nor the compensation under personal accident coverage was payable as it was meant for owner-cum-driver.”

There is force in the submission made on behalf of the appellant. The vehicle was insured for the personal accident cover which was only meant for the registered owner if he himself was driving the vehicle. The vehicle was being driven by the son of the owner. The premium paid was for the personal accident cover for the owner-driver which would mean the owner who is holding an effective driving licence and would not cover the driver who is not the owner. This aspect has been dealt with by the Co-ordinate Bench of this Court in ***Sushila versus Pankaj Mahajan 2013(1) PLR 715.*** Para 13 of the said judgment reads as under:-

> *"The reference to owner-driver must be understood as owner, who is capable of driving and who is driving the vehicle at the relevant time. It shall not be understood as owner/driver (owner or driver). This is evident from regulations that require that owner-driver to be duly licensed to drive the vehicle. The optional cover could include unnamed passenger in a private vehicle also. (The question of unlimited liability or extent of liability for a passenger in a private vehicle has come through independent directions relating to package policy but they are not discussed here as not relevant to our case)."*

The claimants in this case was the mother. It is the son who had died in the accident. Respondent No. 1 is the father and owner of the vehicle. Since the coverage towards personal accident was meant only for the owner, the Tribunal erred in awarding compensation of Rs. 1,00,000/- to the legal representatives of the borrower of the vehicle. Therefore the award cannot sustain.

The appeal is allowed. The statutory amount deposited by the appellant would be returned to them.

(ANITA CHAUDHRY)
JUDGE

May 05, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes