IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2648 of 2013 (O&M)
Date of Decision: May 18, 2017

The Oriental Insurance Company Ltd.

..Appellant(s)

Versus

Kanta Rani and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Lalit Garg, Advocate
for the appellant.

Mr. Krishan Singh, Advocate
for respondent nos.1 & 2.

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ANITA CHAUDHRY, J.

This appeal has been filed by the insurance company against the award dated 22.03.2013, passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri.

The insurance company is disputing its liability as the deceased was a borrower and the personal accident cover was only meant for the insured/registered owner.

The facts are not disputed. Sanjay son of Kanta Rani and Mawassi Ram met with an accident on 17.09.2010. The vehicle was owned by Mawassi Ram-respondent no.2. A claim petition was filed under Section 163-A of the Motor Vehicle Act seeking compensation. The accident was described in para no.24 of the petition and it was disclosed that Sanjay was returning home and was on Jagadhri-Poanta Road when a truck came from Tajewala side. The truck was overtaking the tractor-trolley and it came to the wrong side and struck the motorcycle driven by Sanjay who fell down and suffered crush injuries on the head. An FIR was lodged against unknown driver and unknown truck. The claim was filed against the owner and insurer of the motorcycle.

The insurance company took the plea that the owner could not be recipient of the compensation and the son was not working under the father and the claim petition had been filed with a view to grab compensation.

The Tribunal noticed the arguments made on behalf of the insurance company and held as under:-

> "*16. So far as, the question of compensation is concerned, the respondent no.1 has placed on record a personal cover note Ex.R1 in the name of respondent no.2 i.e. Mawassi Ram, who was the registered owner of the motorcycle bearing registration no.HR02J-9015. A perusal of the document Ex.R1 clearly shows that as per section II-I(ii) the respondent no.1 i.e. insurer is only liable to indemnify the insured the amount upto the extent of Rs.1 lakh. Since, the liability as per the clause in Section II-I(ii) is Rs.1 lakh, so the petitioners are held entitled to get compensation only to the tune of Rs.11 lakh.*"

I have heard the submission of both the sides.

The counsel for the appellant has urged that the legal heirs of deceased-borrower of the motorcycle were not be entitled to compensation under the compulsory personal accident claim and the contents of GR-36 of the Indian Motor Tariff clearly make a distinction and the word owner-driver used in the policy only means the registered owner and not any driver driving the vehicle. Reliance was placed upon a decision of this Court in ***Cholamandlam MS General Insurance Company Ltd. Vs. Smt. Rajesh and others***, FAO-3764-2010, decided on 14.05.2014.

As against it, the counsel appearing for respondent no.4 had urged that the owner had obtained a package policy with a PA cover for the owner-driver and the borrower for the owner would step into the shoes of the owner and the insurance company cannot escape its liability and the reliance was placed upon ***New India Assurance Co. Ltd. Vs. Umesh Kumari and others 2010(1) RCR (Civil) 669***.

Responding to the arguments, the submission was that the claimant cannot take any advantage of the judgment rendered in Umesh Kumari's case (supra) as therein GR-36 was not taken into consideration.

A perusal of the insurance policy makes it evident that the premium of Rs.50/- for compulsory P.A. Cover for owner-driver was paid. In ***Chlamandlam's*** case (supra), the Court had taken into account the Indian Motor Tariff Regulations issued by the Tariff Committee. GR-36 of the Indian Motor Tariff Regulations were quoted and they read 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 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.
>
> The scope of the cover, Capital Sum Insured (CSI) and the annual premium payable under this section are as under:-
>
> xxxxx
>
> 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.

The scope of the cover, Capital Sum Insured and the annual premium payable under this section would be as under:-
xxxxxxxxxxx"

The above would clearly demonstrate that the compulsory personal accident is for the benefit for only registered owner-driver and it cannot be interpreted to mean owner or driver. In these circumstances, it has to be held that the borrower could not get the benefit of the personal accident claim as it was restricted to the registered owner-driver.

The authority referred to by the respondent is not applicable and there GR-36 was not considered. The appeal is allowed and the award is set aside.

The statutory amount or any amount deposited by the appellant would be returned to them. If it has been paid to the claimants then it can be recovered by the appellant.

(ANITA CHAUDHRY)
JUDGE

May 18, 2017
sunil

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No