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

FAO No.8068 of 2014(O&M)

Date of decision: 10.8.2017

ICICI Lombard General Ins. Co. Ltd. …..Appellant

VERSUS

Harjinder Kaur @ Rajinder Kaur and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S. Sidhu, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondent Nos.1 and 2.

Mr. Jaswinder Singh, Advocate for respondent No. 3 and 4.

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REKHA MITTAL, J.

The present appeal has been directed against award dated 22.05.2014 passed by the Motor Accidents Claims Tribunal, SAS Nagar (Mohali) (in short 'the Tribunal') whereby compensation has been awarded to Harjinder Kaur and Nirmal Singh, parents of deceased Inderpreet Singh aged about 18 years who died due to injuries sustained in motor vehicular accident dated 06.07.2012 due to rash and negligent driving of car No.PB10-BQ-5386 by Ravinder Singh.

The Tribunal assessed compensation to the tune of Rs.10,97,000/- payable with interest at the rate of 6% per annum from the date of petition till realisation.

The sole submission made by counsel representing the insurance company of the offending vehicle is that the Tribunal erred and failed to examine the insurance policy Ex.R3 in right perspective which clearly states that the personal accident (P.A.) cover for unnamed passenger is for a capital sum of Rs.5 lakh and for that, premium paid is Rs.250/-. It is argued with vehemence that in view of the terms and conditions of contract of insurance clearly spelled out in the insurance policy Ex.R3, the insurance company is liable to indemnify the insured only to the extent of Rs.5 lakh and the remaining compensation shall be the responsibility of insured/owner and driver of the offending vehicle.

Counsel for the claimants, on the other hand, has refuted contentions of the appellant by making two fold submissions. It has been argued that no such plea was raised by the insurance company in reply to the petition that liability of the insurance company is limited to the extent of Rs.5 lakh. The second submission made by counsel is that as the policy in question is a private car package policy, the insurance company is liable to indemnify the insured with regard to death or bodily injury to a gratuitous passenger without raising any such issue that either the insurance company is not liable to pay compensation or its liability is limited to a particular extent. In support of his contention, he has placed reliance upon judgments of Hon'ble the Supreme Court **Amrit Lal Sood Vs. Kaushalya Devi Thapar, 1998 (3) SCC 744**, **The General Manager, United Insurance Co. Ltd. Vs. M. Laxmi and others, 2009(1) RCR (Civil) 232, National Insurance Co. Ltd. Vs. Balakrishnan and another, 2013 (1) RCR (Civil) 762**. Further reference has been made to a Division Bench judgment of the Madras High Court **Royal Sundaran Alliance Insurance Co. Ltd. Vs. A. Meenakshi, 2010 (1) AICJ 426**, judgment of the Delhi High Court **Yashpal Luthra and another Vs.**

United India Insurance Company Limited and another, 2011 ACJ 1415 and judgment of the Chhattisgarh High Court **ICICI Lombard General Insurance Co. Ltd. Vs. Santosh Dhruv and others, 2014 ACJ 2056**.

I have heard counsel for the parties, perused the paper-book and the records.

Before adverting to the submissions made by counsel for the parties, it is pertinent to mention that in reply to the petition, the insurance company has denied its liability to pay compensation. However, no such specific plea was raised that liability to pay compensation in respect of a passenger was limited to Rs.5 lakh. Indisputably, there is no denial that Ex.R3 is the policy which was issued in favour of the insured, valid from 24.10.2011 to 23.10.2012 midnight. The policy has been described as private car package policy. Schedule of premium in two columns i.e. own damage (a) and liability (b) reads as follows:-

SCHDEULE OF PREMIUM (IN RS)

Own Damage (A)		**Liability (B)**	
Basic own damage	3,281.00	Basic Third Party liability	740.00
Less	1,148.00	Total	740.00
Bonus Percent(35%)	1,148.00	Add	
Total Discount		PA For Unnamed	
		Passenger (500,000.00)	250.00
		Legal Liability Paid Driver	25.00
		Sub Total (Additions)	276.00
Total Own Damage Premium	**2,133.00**	**Total Liability Premium**	**1,015.00**
Total Package Premium (A+B)			3,148.00
Service Tax (Inclusive Education Cess & Higher Education Cess)			324.00
Total Premium Payable (in Rs.)			3,472.00

The clause 'Limits of Liability' in the insurance policy reads as follows:-

> "LIMITS OF LIABILITY: (a) Under Section II – 1 (i) of the policy > Death of or bodily injury. Such amount as is necessary to meet there requirements of the Motor Vehicles Act, 1988. (b) Under Section II – 1 (i) of the policy -> Damage to Third Party Property Rs.750,000.00 PA

Cover for Owner- Driver under section III. CSI Rs.0.00 Voluntary Deductible Rs.0.00"

In column No.2 dealing with liability, a premium of Rs.740/- was paid for basic third party liability (in other words statutory liability) whereas premium for personal accident for unnamed passenger to the tune of Rs.250/- was paid but liability of the insurance company was limited to Rs.5 lakh. Counsel for the claimants has not raised any such plea that the premium paid by the insured in the present case is equivalent to premium payable for a package/comprehensive policy covering death or injury of unnamed passenger without any limitation qua liability of the insurance company.

A bare perusal of the insurance policy would indicate that there was a special contract between the insured and the insurer whereby the insurer shall be liable to pay compensation only to the extent of Rs.5 lakh for personal accident of an unnamed passenger.

Coming to the judgments cited by counsel for the respondents/claimants, the judgment in **Amrit Lal Sood' case** (supra) deals with an Act policy and interpretation of Section 95 of the Motor Vehicles Act, 1939 decided on 17.03.1998. The ratio laid down in the said judgment is no longer a good law with regard to liability of the insurance company to pay compensation to a gratuitous passenger if the policy in question is an Act policy. As per the settled position in law as on date, the insurer is not liable to pay compensation for injury or death of a gratuitous passenger in a car if the policy is only an Act policy.

In **M. Laxmi and others case** (supra), it was held by Hon'ble the Supreme Court that the deceased was a pillion rider and also gratuitous passenger and hence not a third party and the claimant(s) cannot claim compensation from the insurance company as the policy was only an Act policy. For this purpose, the Court relied upon the earlier judgment of the Apex Court **New India Assurance Co. Ltd. Vs. Asha Rani, 2003(1) RCR (Civil) 671**.

In **National Insurance Co. Ltd. Vs. Balakrishnan and another case** (supra), Hon'ble the Supreme Court has held that a Comprehensive/Package policy would cover the liability of the insurer for payment of compensation for the occupant in a car, there is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". However in the said case, it was not the issue before the Court that if in Package/Comprehensive Policy, there is a special contract between the insurer and insured for covering the risk of personal accident to an unnamed passenger with a limitation, insurance company still would be liable to pay the entire compensation running beyond the limits fixed in the policy. In the judgment, there is reference to Section II liability to third parties which reads as follows:-

> "Section II - Liability to Third Parties
>
> 1. Subject to the limits of liabilities as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of -
>
> (i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured."

In the case at hand, there is no such clause in the policy Ex.R3 covering the risk of death or bodily injury to any person including occupants carried in the vehicle (except occupants carried for hire or reward) but so far as this is necessary to meet the necessary requirements of Motor Vehicles Act. Under the circumstances, the claimants cannot derive any advantage to their contention from what has been held by Hon'ble the Supreme Court in **Bala Krishnan and others case** (supra).

This brings the Court to the Division Bench judgment of the Madras High Court **A. Meenakshi's case** (supra). In para 10 of the judgment, there is detailed reference to the insurance policy in question. In the concluding lines of para 10, it has been held that "In the Policy Schedule, we do not see any limits to the liability with regard to third party occupants." In para 14, it has been noted that "before the Delhi High Court, the counsel for the insurance company could not produce any material, nor a single policy, where in a Comprehensive Policy special premium was charged to cover the risk of occupants/passengers."

A careful reading and analysis of the judgment by the Division Bench of the Madras High Court and a Single Bench of the Delhi High Court would make it evident that in none of the cases the Court had dealt with a Package Policy in regard whereof the insured had paid premium of basic third party liability and P.A. for unnamed passenger restricting liability of the insurance company to the tune of Rs.5 lakh. On the contrary, in the case at hand, there is a special contract between the insurer and the insured, therefore, it is difficult to accept contention of the respondents/claimants that insurance company is liable to pay the entire compensation assessed by the Tribunal or in other words it cannot restrict its liability to Rs.5 lakh prayed for by the insurance company.

In the judgment passed by the Chhattisgarh High Court in **Santosh Dhruv and others case** (supra), schedule of policy was titled as

Private Car Liability Only policy but the terms and conditions of policy were of Package Policy wherein insurance company charged Rs.250/- to cover risk of unnamed passenger without specifying any limit of liability. In those circumstances, it was held that liability of insurance company is unlimited. The judgment passed by the Chhattisgarh High Court indirectly supports contention of the appellant that in case liability qua an unnamed passenger has been limited by a special contract between the insured and the insurer, the insurer's liability cannot be absolute.

With due regard to the observations made by Hon'ble the Supreme Court with regard to liability of the insurance company in the case of a Comprehensive/Package Policy but as in the case at hand, the insured had only paid premium towards third party policy/Act policy and P.A. for unnamed passenger limiting liability to the extent of Rs.5 lakh, the mere fact that the policy is described as Private Car Package Policy is not sufficient to hold that liability of the insurance company is unlimited. In this view of the matter, I find merit in contentions of the appellant that insurance company is liable to pay compensation only to the extent of Rs.5 lakh along with interest thereon.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. It is clarified that in case the insurance company has paid compensation to the claimants beyond their liability of Rs.5 lakh along with interest thereon, the appellant shall be entitled to recover excess amount from the insured and not from the claimants. Conversely, the claimants shall be entitled to recover compensation to the extent of Rs.5 lakh along with interest thereon from the insurance company and the remaining liability would be of the driver and owner of the offending vehicle. No order as to costs.

AUGUST 10, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no