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

102 **FAO-5553-2012 (O&M)**

Date of Decision:17.01.2018

Harmesh Rani and others **.....Appellants**

Versus

Sunil Rana and another **....Respondents**

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Vishal Sharma, Advocate for
Mr. Vijay Lath, Advocate,
for the appellants.**

**Mr. R.C. Kapoor, Advocate,
for respondent No.2.**

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<u>HARI PAL VERMA, J.(Oral)</u>

Appellants-claimants have filed the present appeal against the award dated 26.03.2012 passed by learned Motor Accidents Claims Tribunal, Rupnagar (for short “the MACT), whereby the claim-petition filed by the claimants under Section 163-A of the Motor Vehicles Act (for brevity “the Act”), was dismissed.

Briefly stated, the claimants had filed the aforesaid claim-petition on account of death of Vikas Kumar, who along with his elder brother Sunil Rana and one Rajesh Kumar, resident of village Takhatgarh, Police Station Nurpur Bedi, District Rupnagar, were going from Nurpur Bedi to Ropar Sahara India Office. Sunil Rana and Rajesh Kumar were on one motorcycle, whereas deceased Vikas Kumar was on the other motorcycle bearing registration No.HP-20C-2865. The said vehicle was being driven by the deceased at the time of accident. When he reached between village Upparla Garha and Garhbaga on Nurpur Bedi to Ropar Road, the deceased suddenly lost the control over his motorcycle. He fell on the road and received multiple serious injuries on his head, chest, legs and other parts of the body and died on the spot.

Learned MACT has dismissed the claim-petition on the ground that the accident has taken place due to use of vehicle in question by Vikas Kumar. The claimants have placed on record a copy of DDR (Ex.P1) and copy of post-mortem report (Ex.P2) and as the claim-petition was filed under Section 163-A of the Act, it was pleaded that the claimants are not burdened to prove the negligence of any person. What is required in this case, is to prove the death of Vikas Kumar which has occurred in the accident while using vehicle bearing registration No.HP-20C-2865. The learned MACT has found that no other vehicle was involved in the said accident and the deceased Vikas Kumar had borrowed the said motorcycle from Sunil Rana, who is brother of the deceased and was its registered owner. The learned MACT has found that in the insurance cover note (Ex.R2), no extra premium was paid by the owner of the vehicle in order to cover the personal accident of the driver/owner and therefore, the case of the claimants does not cover personal accident and the deceased cannot be categorized as third party either. Resultantly, the claim-petition was declined.

Learned counsel for the claimants has referred to the policy issued by the respondent-Insurance Company and on the basis of this policy, has argued that the insurer had deposited a composite amount which included compulsory personal accident cover of the owner/driver as well. Since the deceased had borrowed the motorcycle of his own brother, he has stepped into the shoes of the original owner and therefore entitled for compensation as claimed in the claim-petition.

Learned counsel for the appellants has referred the judgment of this Court in **<u>New India Assurance Company Limted Versus Umesh Kumari and others</u>, 2010(1) R.C.R. (Civil) 669,** to contend that when premium towards compulsory personal accident cover for owner-cum-driver was paid and the deceased was the son of owner of the offending vehicle, he stepped into the shoes of the owner by borrowing the vehicle with permission of the owner, therefore, the policy was to be treated as a comprehensive policy and the claimants are entitled for compensation. Learned counsel for the appellants has also relied upon the judgment of this Court in **<u>New India Assurance Company Limited Versus Karamjit and others</u>, 2013(2) PLR 495.**

On the other hand, learned counsel for respondent No.3-Insurance Company has argued that in view of the judgment passed by this Court in **<u>Sushila w/o late Sh.Muna Lal Ji and others Versus Sh. Pankaj Mahajan and another</u>, 2013(1) PLR 715,** the claimants are not entitled for any compensation as the cover note nowhere depicts that they have paid any premium towards personal accident cover. He has referred para 11 and 12 of the judgment, which read as under:-

> "11. *The Indian Motor Tariff Regulations are issued by the Tariff Committee. They have, therefore, statutory effect as law. Some of the provisions are reproduced, to the extent that they are relevant. They are classified as General Regulations in Paragraphs (GR1, GR2, etc.) and the tariffs covered for distinct categories are referred to as India Motor Tariffs (IMT-1, IMT-2 etc.). GR-3 prescribes two types of policies:-*
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> ***"GR.3. Policy Forms:***

Policies insuring Motor Vehicles are to be issued only as per the Standard Form(s) given in Section 6 of the INDIA MOTOR TARIFF.

A. Types of Policies

There are two types of Policies :

(i) Liability Only Policy*: This covers Third Party Liability for bodily injury and/ or death and Property Damage. Personal Accident Cover for Owner-Driver is also included.*

(ii) Package Policy: *This covers loss or damage to the vehicle insured in addition to* ***(i)*** *above. Restricting the scope of cover under* ***Section-I (loss of or damage to the vehicle insured)*** *of the Package policy without any reduction in Tariff rates is permitted. Excepting this, no alteration or extension of any of the Covers, Terms, Conditions, Exclusions, etc. of any of the Policies/Endorsements laid down in this tariff is permitted without prior approval of the TAC.*

B. Rating:

Rates provided under this Tariff are minimum rates. Loading on tariff premium rates by 100% may be applied for adverse claims experience of the vehicle insured and individual risk perception as per the insurer's assessment. If the experience continues to be adverse, a further loading of 100% on the expiring premium may be applied. No further loading shall apply."

The types of policies include what Section 147 of the Motor Vehicles Act mandates and what parties could do beyond what is mandated. Personal accident cover is not statutorily mandated. It is optional. A package policy that provides insurance cover to own damage to vehicle or damage beyond the statutory minimum of Rs.6,000/- could come through special package terms under a 'package'.

12. The personal accident cover is compulsory for owner-driver and optional through a package policy. It is to be seen alongside GR 36, which informs the extent of insurance that is possible:-

"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 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 ` 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

I have heard the learned counsel for the parties.

Having perused the policy, it is not established that the insurer had paid a premium so as to cover personal accident and therefore, the plea of the claimants that they have paid a composite premium, cannot be accepted. However, as held in the case of **Sushila's case(supra),** the insurance company shall pay compensation of ₹50,000/- to the claimants under no fault liability under Section 140 of the Act. The awarded amount shall carry interest @ 7.5% from the date of filing of the claim-petition till its realization.

With the aforesaid modification in the award, the present appeal stands disposed of.

January 17, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No