IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8021 of 2015 (O&M)
Date of Decision 06.07.2018

The Oriental Insurance Company Limited .... Appellant

Vs.

Paramjit Kaur and another .... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ram Avtar, Advocate, for the appellant/Insurance Company.

Ms.Aarti Thakur, Advocate, for respondent No.1.

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<u>RITU BAHRI, J. (ORAL)</u>

Present appeal has been preferred by the appellant/Insurance Company (for short 'the appellant'), against award dated 21.08.2015, passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') vide which compensation to the tune of Rs.1,00,000/- was awarded to the claimants under the personal accident cover on account of death of her son Gursewak Singh in a motor vehicular accident.

On 13.12.2013, deceased Gursewak Singh was going towards Kissanbhawan Chowk from Attawa Chowk while driving motor cycle bearing registration No.PB65-C-7319. When he reached near the Small Chowk falling between the crossing of Kissan Bhawan and Attawa Chowk, suddenly a mechanical defect was developed in the above said motor cycle and its brakes failed. It went out of control and struck against the tree. As a result of impact, both the occupants fell down and suffered multiple injuries which proved fatal to Gursewak Singh. Thereafter, he died on account of injuries suffered by him. Regarding this accident, a DDR No.7 dated 14.12.2013 was recorded in Police Station, Sector 36, Chandigarh.

The learned Tribunal has taken into account the insurance policy EX.P6 and respondent No.2-Ranjit Singh being the owner as his son Gursewak Singh-deceased had borrowed the vehicle from him. Ranjit Singh had stepped into the shoes of owner and as per insurance policy Ex.P-6 under the compulsory personal accident, the claim was allowed for Rs.l Lac. This aspect has been considered by the co-ordinate Bench of this Court in the case of **Cholamandlam MS General Insurance Company Limited Vs. Smt. Rajesh and others passed in FAO No.3764 of2010,** wherein GR-36 of the Indian Motor Tariff has been examined which is 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)
>
> 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"

As per learned counsel for the appellant perusal of the above mentioned regulation clearly reveals that compulsory personal accident is for the benefit only the registered owner-driver '- cannot be interpreted to mean owner or driver but can only to interpret that person who is the owner and driver himself. On perusal of the above mentioned judgment that I find that this point was not raised before learned Judge.

Hon'ble Supreme Court in the case of **Ningamma and anr. Vs. United India Insurance Company Ltd. 2009(13)SCC 710**, wherein it has been held that if death of owner is occurred while driving his own vehicle, his legal heirs not entitled to claim compensation under Section 163A of Motor Vehicles Act, likewise if a borrower of vehicle died in the accident, his legal heirs also not entitled to claim compensation under Section 163A as borrower will be considered owner of vehicle.

Learned counsel for the respondent has further relied upon the judgment of the Co-ordinate Bench passed in the case of **The Oriental**

Insurance Company Limited V s.Darshani Devi @ Pinki and Others passed in FAO No.7007 of 2011, wherein it has been held that the deceased was himself driving the motorcycle. The appellant had raised a contention hat his risk was not covered under the policy. It is only the registered owner whose risk was covered under the **Personal Accident** cover. The deceased not being the registered owner of the offending motorcycle, was not covered under the policy. As per the policy, Ex.P6, the risk of the registered owner-cum-driver was covered for PA coverage for sum of Rs.l Lac. Admittedly, the deceased was not the registered owner of the vehicle, so his risk cannot be said to be covered for PA risk under the policy. Hence, for the death of the deceased, the liability could not be fastened upon the insurer. Thus, the award of the Tribunal fastening liability of Rupee one lac so, on the appellant-insurance company is erroneous and is accordingly set aside. The appeal is allowed and impugned impugned award qua the appellant-Insurance is set aside.

06.07.2018 **(RITU BAHRI)**
anil **JUDGE**

Whether speaking/reasoned yes/No.

Whether reportable Yes/No.