

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II,
U.T. CHANDIGARH

Consumer Complaint No : 70 of 2022
Date of Institution : 19.01.2022
Date of Decision : 03.10.2023

1] Smt.Neelam Sharma, age 58 years, wife of Sh.Khem Chand Sharma, mother of Sh.Ankush Sharma, deceased;

2] Sh.Khem Chand Sharma, age 65 years, son of Sh.Ballo Ram Sharma, father of Sh.Ankush Sharma, deceased (Insured-Owner of Car No.PB-65-AH-0563)

Both r/o H.No.3073, Global City, Sector 124, Kharar, District SAS Nagar, Mohali, Punjab 144301

2nd Address:- H.No.7, SBI Complex, Sector 64, Phase-X, Mohali, Punjab 160062

.....Complainants

Versus

IFFCO TOKIO General Insurance Company Limited, Branch Office through Branch Manager, Plot No.2 B & C, Madhya Marg, Sector 28, Chandigarh (Insurer of Car No.PB-65-AH-0563)

..... Opposite Party

BEFORE: MR.AMRINDER SINGH SIDHU, PRESIDENT

MR.S.K.SARDANA,

MEMBER

Present : Sh.Devinder Kumar, Counsel for the complainant

Sh.J.P.Nahar, Counsel for the OP

ORDER BY AMRINDER SINGH SIDHU, M.A (Eng.),LLM,PRESIDENT

By dint of this common order, we propose to dispose off two (02) connected consumer complaints i.e. present consumer complaint and another consumer Complaint No.652 of 2022 titled as Anita Bhatia & Ors. vs. IFFCO TOKIO General Insurance Company Limited.

2] The facts are gathered from C.C.No.70/2022 – Neelam Sharma vs. IFFCO TOKIO General Insurance Company Limited.

The complainants filed present complaint under Section 35 of the Consumer Protection Act, 2019 pleading that the complainants are the legal representatives of Sh.Ankush Sharma, who died in a roadside accident on intervening night of 28/29.08.2021 while driving Alto Car bearing Regd. No.PB-65-AH-0563 owned by his father i.e. complainant No.2, which was insured with OP vide insurance covered Ann.C-6 valid from 13.4.2021 to 12.4.2022. It is submitted that on 28.8.2021, the son of the complainants namely Sh.Ankush Sharma was going from Chandigarh to Rohru District Shimla (HP) while driving a Car No.PB-65-AH-0563 owned by the insured-Complainant No.2, Sh. Khem Chand Sharma, the father of the deceased and Monika was other occupant of the aforesaid Car. It is stated that after crossing Theog, when they reached in the area of Adela Thach near Parmeshwari Dhank the Car suddenly fell in a Dhank (gorge), as a result they both received serious injuries and died. The deceased were taken to CHC Nankhari, District Shimla where their post mortems were conducted and FIR No.63 dated 31.08.2021 was registered at Police Station Nankhari, District Shimla (HP) under Section 279/304-A of IPC (Ann.C-7 & C-8).

It is pleaded that as the car in question involved in the accident was duly insured with the OP covering the risk of Registered Owner - Driver (CSI) under the head of P.A. Cover under section III for Rupees Fifteen Lacs Only (Rs.15,00,000/-), the legal heirs of the deceased i.e. the complainant no.2 herein lodged the claim for the grant of the aforesaid amount with the OP, which has been denied vide letter dated 27.11.2021 with a reason "No Claim" on the ground that Ankush Sharma was driving the vehicle at the time of accident whereas the Registered owner-cum-insured of the Car was Khem Chand Sharma at the time of accident (Ann.C-9). Hence, the present complaint has been preferred with a prayer to direct the OP to pay Rs.15 lacs under the policy along with interest, apart from compensation and litigation.

2] The OP has filed written version and while admitting the factual matrix of the case, stated that accident cover under the policy in question is meant for Owner-cum-Driver only and not for any unnamed person who might use the insured vehicle. It is stated that in the form insurance cover it is mentioned that Khem Chand Sharma has nominated Neelam Sharma (wife) being the person to receive the proceeds of the P.A. Claim in case the insured Khem Chand Sharma dies in the accident while driving her insured vehicle in question. It is stated that the P.A. cover was only meant for Khem Chand Sharma. It is denied that the deceased Sh. Ankush Sharma has stepped into the shoes of the owner when the owner himself is alive. It is denied that the borrower of a vehicle becomes the owner of the vehicle. It is pleaded that the owner of the vehicle is the person in whose name the registration of the vehicle is recorded in the books of the Registration Authorities which in the present case is in the name of Khem Chand Sharma and he is the owner of the vehicle and he alone has a right to claim for PA Cover in case of any accident while driving the said vehicle or the Nominee in case of the death of the insured Owner-Driver. Denying all other allegations, it is prayed that the complaint be dismissed.

3] Parties led evidence in support of their contentions.

4] We have heard the Counsel for the parties and have gone through the entire record including written arguments.

5] The complainants are very well covered under the definition of 'consumer'. Section 2(7)(i)(ii) of The Consumer Protection Act, 2019 stipulates as under:-

"consumer" means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

*(ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, **when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.***

6] After the death of Sh.Ankush Sharma, his legal heirs, are consumers as well as complainants per Section 2(5)(vi) of The Consumer Protection Act, 2019 and therefore, they are entitled to file & get claim, if any. The said section is reproduced as under:-

2 (5) "complainant" means—

(i) xxxxx

(vi) in case of death of a consumer; his legal heir or legal representative;

From the above, it is clear that the complainants falls under the definition of 'consumer' being the legal heirs of Sh.Ankush Sharma, deceased, and thus, they are entitled to file the present complaint as well as to get the claim, if any.

7] Deceased Sh.Ankush Sharma son of Sh.Khem Chand Sharma, has certainly availed/used the insured vehicle with the approval of first party/person i.e. Sh.Khem Chand Sharma, owner of vehicle.

8] It is undisputed that the vehicle in question, insured with OP Company is having 'Personal Accident Cover' for owner-driver to the tune of Rs.15 lacs, was driven by Sh.Ankush Sharma, deceased, when it met with an accident/fell in gorge and he died due to said accident, as is also clear from FIR NO.0063, dated 31.8.2021 under Sections 279/304-A IPC at Police Station Nankhari, District Shimla (HP) & Post Mortem Report (Ann.C-8 & C-7). The OP denied the claim of Personal Accident lodged by complainants stating that Sh.Khem Chand Sharma is owner of the vehicle and driver Ankush Sharma was driving the vehicle at the time of accident and died in the said accident, which is not covered in the said scope of P.A. owner-driver coverage.

9] The *Hon'ble National Consumer Disputes Redressal Commission, New Delhi in R.P. No.558 of 2018 – United India Insurance Co. Ltd. vs. Gyan Singh Yadav & Anr.decided on 25.09.2018*, has held that:-

The term 'owner - driver' is in itself ambiguous and unclear. In case it was meant to construe only the owner-cum-driver herself driving, the same should have been unambiguously and clearly stated in the insurance policy. As would appear to a reasonable person, the proposition intended to be conveyed and understood was that the owner as well as the driver will be covered under the policy (and especially if the registered owner buying that policy was a lady and the subject vehicle was a motorcycle and the area in which the lady resided was a district like Mainpuri in the Chambal region of Uttar Pradesh).

10] The **Hon'ble Punjab & Haryana High Court in CWP No.6472 of 2014 (O&M) – M/s IFFCO TOKIO General Insurance Co. Ltd., vs. Smt.Kavita and Others, decided on 27.2.2020** has held that :-

In my considered opinion, the claimants in this case are entitled to the personal accident cover for which the premium was admittedly deposited. Respondents No. 1 to 3 are the dependent widow, minor children of the deceased – Parmod. They chose to approach the learned Permanent Lok Adalat on 13.05.2013 after dismissal of their claim petition under Section 163A of the Act. In the peculiar facts and circumstances of this case, I am not inclined to set aside the impugned award on the ground that the claimant's entitlement to the fixed amount (PA cover) as per the policy could have been agitated only in the said proceedings under the Motor Vehicles Act and even though the same has not been adjudicated therein, the claimants are estopped from agitating for the same. At the same time, I find merit in the argument raised by learned counsel for the petitioner for reduction of the rate of interest, keeping in view the prevalent rate of interest available. The same is, thus, reduced to 7.5% per annum from 9% per annum.

11] Further the controversy, as is involved in the present case, has been settled by the **Hon'ble Supreme Court in latest judgment in case of 'Ramkhiladi & Anr. Vs. The United India Insurance Company Limited, 2020 ACJ 627' by the Hon'ble Supreme Court of India**, to the effect that the borrower of the vehicle steps into the shoes of the owner and therefore, the borrower of the vehicle or his legal representatives are entitled for personal accident cover. Thus, Sh.Ankush Sharma (since deceased), the driver of the insured car in question steps into the shoes of the owner of the vehicle and as such entitled to get Personal Accident cover (P.A. Cover) due under the policy. Hence, the rejection of the claim lodged by the complainants, being the legal heirs of Sh.Ankush Sharma (deceased), amounts to deficiency in service. The complainants are held entitled to get the claim.

12] In view of the above discussion and findings, the deficiency in service on the part of Opposite Party stands proved. Therefore, the present complaint stands allowed against OP with direction to pay a sum insured amount of Rs.15 lacs under P.A.Cover of insured vehicle in question, to the complainants being LR's of deceased Sh.Ankush Sharma in equal shares with interest @7.5% p.a. from the date of death of deceased i.e. 28.8.2021 till date of actual realization.

13] **Similarly, the connected Consumer Complaint No.652 of 2022 – Anita Bhatia & Ors. vs. IFFCO TOKIO General Insurance Company Limited**, also stand allowed against OP with direction to pay a sum insured amount of Rs.15 lacs under P.A.Cover of insured vehicle in question, to the complainants being LR's of deceased Sh.Rajesh Bhatia in equal shares with interest @7.5% p.a. from the date of death of deceased i.e. 08.01.2021 till date of actual realization.

This order shall be complied with by the Opposite Party within a period of 90 days from the date of receipt of its certified copy.

14] Pending application, if any, stands disposed of accordingly.

Certified copy of this order be communicated to the parties, free of charge. After compliance file be consigned to record room.

Announced

03.10.2023

Sd/-

(AMRINDER SINGH SIDHU)

PRESIDENT

Sd/-

(S.K.SARDANA)

MEMBER