**(2013) 09 NCDRC CK 0029**

**In the National Consumer Disputes Redressal Commission**

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

Smt. Havaben and M/s. Arif Enterprise RESPONDENT

**Date of Decision :** 04-09-2013

**Acts Referred:**

**Citation :** 2013 4 CPJ 80

**Hon'ble Judges :** K.S.CHAUDHARI J.

**Final Decision :** Petition allowed

## Judgement

1. THIS revision petition has been filed by the petitioner/OP against the order dated 3.5.2008 passed by the State Consumer Disputes Redressal Commission, U.T. of Daman and Diu and Dadra and Nagar Haveli at DIU (in short, ''the State Commission'') in S.A. No. 02/2008/CSD/09 - Smt. Havaben Vs. United India Ins. Co. Ltd. & Anr. by which, while allowing appeal, order of District Forum allowing complaint was set aside. Brief facts of the case are that complainant/Respondent No. 1''s husband Sabirbhai Mansuri was a driver of truck no. GJ - 17 -X -5373 owned by OP No. 2/Respondent No. 2 and truck was insured by OP No. 1/ petitioner. Truck met with an accident on 24.12.2004 and Sabirbhai Mansuri died. It was further alleged that package policy in which personal accident insurance was also incorporated was taken and in case of accident owner/driver were entitled to compensation of Rs. 2,00,000/ - in case of death. Complainant being wife of Sabirbhai Mansuri filed claim with OP No. 1 which was repudiated on 26.4.2006 on the ground that only the owner was entitled to get compensation. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted claim and submitted that claim was rightly repudiated, as only owner -driver was covered in the policy and prayed for dismissal of complaint. Learned District Forum after hearing both the parties, dismissed complaint. Appeal filed by the complainant was allowed by learned State Commission vide impugned order and directed petitioner to pay Rs. 2,00,000/ - along with 6% p.a. interest and further awarded Rs. 10,000/ - as cost against which, this revision petition has been filed.

2. HEARD learned Counsel for the parties and perused record. Learned Counsel for the petitioner submitted that as per terms and conditions of the policy, owner -driver was covered under the policy and learned District Forum rightly dismissed complaint, but learned State Commission has committed error in allowing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the Respondent No. 1 submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed. Learned Counsel for the Respondent No. 2 supported Counsel for the Respondent No. 1.

3. LEARNED State Commission has held that there was no dispute that Sabirbhai Mansuri was employed by Respondent No. 2 as a driver and there was no dispute that package policy was taken by Respondent No. 2 from petitioner and there was no dispute that driver died in accident.

4. NOW , the main question to be decided in this case is as to whether; deceased Sabirbhai Mansuri was covered under the policy or not. Learned District Forum came to the conclusion that deceased was neither owner of the vehicle, nor policy was issued in his name; hence, he was not covered under the policy, whereas learned State Commission came to the conclusion that driver as well as owner both are independently covered under the package policy and further observed the words "owner -driver" are employed to cover both the situations and not the one that only the owner -driver is covered and that the driver who is not the owner is not covered. Perusal of insurance policy clearly reveals that this policy was taken by OP No. 2 through partner Suleman Haji Ismail and personal accident cover for "owner driver" was provided to the extent of Rs. 2,00,000/ -. Section 4 of the package policy reveals that in case of death of owner -driver of the vehicle in direct connection with the vehicle insured, etc., he was entitled to 100% compensation. The proviso 4 of Section 4 runs as under: 4. This cover is subject to:

(a) The owner -driver is the registered owner of the vehicle insured herein;

(b) The owner -driver is the insured named in this policy;

(c) The owner -driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident.

This proviso makes it very clear that owner -driver means, he must be registered owner of the vehicle and his name must be shown as insured in the policy and further, owner -driver must hold effective driving licence at the time of accident. Learned Counsel for the petitioner has also placed Annexure ''B'' at Page 36 of the paper book and Clause ''A'' of GR 36 runs as under:

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 licence 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 licence. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company.

5. PERUSAL of terms and conditions of package policy and GR 36 makes it very clear that person holding an effective driving licence for the purpose of this policy and compulsory personal accident cover cannot be granted when the vehicle is owned by a Company. Learned State Commission has committed error in arriving at the conclusion that driver of the vehicle is also covered under the policy, whereas only owner of the vehicle that too having valid driving licence is covered under this policy only if insurance policy has been issued in his name. In the case in hand, insured is Respondent no. 2, i.e., M/s. Arif Enterprise and in such circumstances, by no stretch of imagination, deceased Sabhirbhai Mansuri who was driver was covered under package policy issued by petitioner and learned State Commission committed error in allowing appeal. Learned District forum rightly dismissed complaint, as deceased was not covered under the policy.

6. LEARNED State Commission has allowed appeal on the ground that if there is any ambiguity with regard to clauses in the insurance policy and when two interpretations are reasonably possible one of which favours policy holder, is to be accepted. We agree with this proposition of law, but we do not find any ambiguity in the clauses of policy issued by the petitioner and in such circumstances, complainant being beneficiary are not entitled to any claim and petitioner has not committed any deficiency in repudiating the claim. Consequently, revision petition filed by the petitioner is allowed and impugned order dated 3.5.2008 passed by learned State Commission is set aside and order of District Forum dated 4.12.2007 is affirmed. There shall be no order as to costs.

 