

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,****U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/200/2021
Date of Institution	:	26/03/2021
Date of Decision	:	03/11/2023

1. Rubi Rani W/o Parmod Kumar, Aged - 42 Years.
2. Milan Kumar S/o Parmod Kumar Aged:-17 years, Being Minor represented through his natural guardian Mother/ Complainant No.1 (Rubi Rani)
3. Vansh Kumar S/o Parmod Kumar Aged:-15 Years Being Minor represented through his natural guardian Mother/ Complainant No.1 (Rubi Rani)
4. Nilakshi D/o Parmod Kumar, Aged 14 Years, Being Minor represented through her natural guardian Mother/ Complainant No.1 (Rubi Rani)

All Claimants are Resident of Village:- Ghagon Roranwali Bora, Hoshiarpur, Punjab-144527.

.....Complainants

**V E R S U S**

1. HDFC ERGO General Insurance Company Ltd, Branch Office:- SCO 124-125, Sector-8C, Madhya Marg, Chandigarh. Through its Branch Manager.
2. HDFC ERGO General Insurance Company Ltd, Registered & Corporate Office:- 1<sup>st</sup> floor, HDFC House, 165/166 Back bay Reclamation, H.T, Parekh Marg, Mumbai. Through its General Manager.

... Opposite Parties

**CORAM :**

<b>SHRI PAWANJIT SINGH</b>	<b>PRESIDENT</b>
<b>MRS. SURJEET KAUR</b>	<b>MEMBER</b>
<b>SHRI SURESH KUMAR SARDANA</b>	<b>MEMBER</b>

**ARGUED BY** : Sh. Nitin Gupta, Advocate for complainants  
: Sh. Nitesh Singhi, Advocate for OPs

**Per Pawanjit Singh, President**

1. The present consumer complaint has been filed by Rubi Rani and others, complainants against the aforesaid opposite parties (hereinafter referred to as the OPs). The brief facts of the case are as under :-

- a. It transpires from the allegations as projected in the consumer complaint that late Sh. Parmod Kumar, deceased/insured, husband of complainant No.1 and father of complainant Nos.2 to 4, had obtained two years Personal Accidental Death Policy (Ex.C-1) from the OPs for sum insured of ₹25,00,000/- valid w.e.f. 30.4.2019 to 29.4.2021 (hereinafter referred to as "*subject policy*") with additional benefits of ₹2,50,000/- for each dependent child education and ₹25,000/- as last rites cost. At the time of receiving the premium of ₹5,761/-, the terms and conditions of the subject policy were not supplied to the insured. On the late evening of 23.7.2020 around 9:00 p.m. when the predecessor in interest of the complainant namely Parmod Kumar was travelling as pillion rider on a motorcycle, having been driven by Vinod Kumar, the same was knocked down by an unknown vehicle coming from the wrong side at Ror Majra, near Shiv Mandir, as a result of which both the motorcyclist as well as the pillion rider had fallen down and sustained grievous injuries. Immediately both the injured persons were shifted to Civil Hospital, Garhshankar, Hoshiarpur, Punjab from where Parmod Kumar was referred to PGI, Chandigarh where he remained hospitalized for 8 days w.e.f. 23.7.2020 to 31.7.2020 and succumbed to the injuries on 31.7.2020. Copies of admission record of Civil Hospital, Garhshankar, PGI Medical certificate and post mortem report are Ex.C-2 to C-4. Thereafter complainant No.1, being widow and nominee of the deceased, had lodged claim with the OPs on 17.9.2020 and she was asked to submit documents in support of her claim by the OPs vide letters (Ex.C-5 & C-6). FIR (Ex.C-7) regarding the accident was also registered at Police Station Garhshankar on 31.7.2020. All the documents were supplied by the complainants in original with the OPs, but, instead of settling the claim of the complainant, OPs had wrongly repudiated the claim vide letter dated 16.2.2021 (Ex.C-2) on the ground that it was found in the scrutiny of the documents that the deceased Parmod Kumar was under the influence of liquor at the time of accident. It is further alleged that no medical test of the deceased was done in order to ascertain the fact if the deceased was under the influence of liquor at the time of accident and the OPs only relied upon the observations made by the doctor in the OPD record, who has stated that the patient was smelling alcohol despite of the fact that there was no medical examination report or any other report of intake of alcohol by Parmod Kumar. In this manner, the aforesaid acts of the OPs amounts to deficiency in service and unfair trade practice on their part. OPs were requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.
  - b. OPs resisted the consumer complaint and filed their written version, inter alia, taking preliminary objections of maintainability, concealment of facts, jurisdiction and also that the claim of the complainants was rightly repudiated as the insured was under the influence of liquor at the time of accident. However, it is admitted that the deceased/insured had obtained the subject policy from the OPs, but, alleged that the claim is not admissible as per general exclusion clause 4 of the subject policy. It is further alleged that as per the indoor case papers of Civil Hospital, Garhshankar, the deceased/insured was under alcohol intoxication and there was alcoholic breath as well and accordingly complainants are not entitled for any claim in view of the terms and conditions of the subject policy. On merits, the facts as stated in the preliminary objections have been reiterated. The cause of action set up by the complainants is denied. The consumer complaint is sought to be contested.
  - c. In replication, complainants re-asserted the claim put forth in the consumer complaint and prayer has been made that the consumer complaint be allowed as prayed for.
2. In order to prove their case, parties have tendered/proved their evidence by way of respective affidavits and supporting documents.
  3. We have heard the learned counsel for the parties and also gone through the file carefully, including the written arguments.
    - i. At the very outset, it may be observed that when it is an admitted case of the parties that the deceased predecessor-in-interest of the complainants namely Sh.Parmod Kumar (deceased/insured) had obtained the subject policy which was valid w.e.f. 30.4.2019 to 29.4.2021 covering the accidental death to the tune of ₹25,00,000/-, ₹2,50,000/- for dependent child education and ₹25,000/- as last rites cost, as is also evident from Ex.C-1 and the on the relevant date, time and place of accident, the deceased/insured was pillion rider on the subject motorcycle, having been driven by Vinod Kumar which met with an accident with an unknown vehicle, as a result of which both the motorcyclist as well as the pillion rider had fallen from the motorcycle and sustained grievous injuries and thereafter both were shifted to Civil Hospital, Garhshankar from where the

insured Parmod Kumar was shifted to PGI, Chandigarh where he remained admitted from 23.7.2020 to 31.7.2020 and ultimately succumbed to the injuries on 31.7.2020, as is also evident from the copy of the FIR (Ex.C-7), the case is reduced to a narrow compass as it is to be determined if the OPs are unjustified in repudiating the genuine claim of the complainants and the complainants are entitled for the reliefs prayed for in the consumer complaint, as is the case of the complainants, or if the OPs are justified in repudiating the claim of the complainants on the ground that the deceased/insured was under the influence of liquor at the time of accident, being in violation of the terms and conditions of the subject policy and the consumer complaint, being false and frivolous, is liable to be dismissed, as is the defence of the OPs.

- ii. In the backdrop of the foregoing admitted and disputed facts on record, one thing is clear that the entire case of the parties is revolving around the copies of terms and conditions of the subject policy (Ex.C-1/OP-1/1), FIR (Ex.C-7) as well as the medical record (Ex.OP-1/9), having been relied upon both the parties, and the same are required to be scanned carefully.
- iii. Perusal of the subject policy (Ex.OP-1/1) containing the general exclusions indicates that in case the insured person, being under the influence of alcohol or drugs, sustains bodily injury or sickness, the company shall not be liable to pay any benefit in respect of such person. The relevant portion of the subject policy is reproduced as under :-

*“GENERAL EXCLUSIONS*

*The Company shall not be liable to pay any benefit in respect of any Insured Person :*

*xxx*

*xxx*

*xxx*

*4) for Bodily Injury or Sickness sustained or suffered whilst the Insured Person is or as a result of the Insured Person being under the influence of alcohol or drugs or narcotics unless professionally administered by a Physician or unless professionally prescribed by and taken in accordance with the directions of a Physician.”*

- iv. Perusal of copy of FIR (Ex.C-7) clearly indicates that on the relevant date, time and place, the accident did not take place due to the rash and negligent driving of the motorcyclist, Vinod Kumar or of the deceased/insured who was pillion rider, rather the same had taken place due to the rash and negligent driving of the driver of some unknown vehicle who, immediately after the accident, had sped away from the spot.
- v. So far as the medical record (Ex.OP-1/9) is concerned, the same indicates that the medical officer who examined the insured/deceased immediately after the accident had observed that the patient was under alcohol intoxication and alcohol breath smell was there. Except this document, there is no other evidence on the file showing that if any blood sample of the patient was collected in order to ascertain whether the patient was under the influence of alcohol or not.
- vi. The learned counsel for the complainants contended with vehemence that as it stands proved on record that the insured/deceased Parmod Kumar was pillion rider on the subject motorcycle, which was being driven by Vinod Kumar, and the same was knocked down by driver of an unknown vehicle, who had sped away from the spot, and the accident had taken place due to the rash negligent driving of the said driver, OPs are unjustified in repudiating the claim of the complainants on the ground that the deceased/ insured has violated the terms and conditions of the subject policy by consuming alcohol and the instant consumer complaint be allowed.
- vii. On the other hand, learned counsel for the OPs contended with vehemence that as it stands proved on record that the deceased/insured was under the influence of alcohol at the time of accident, which is a clear violation of the terms and conditions of the subject policy, and since the claim of the complainants is covered under the general exclusion clause, the same was rightly repudiated by the OPs and the consumer complaint of the complainants be dismissed with costs.

- viii. There is no force in the contention of the learned counsel for the OPs as firstly it stands proved on record from the copy of the FIR (Ex.C-7) that the accident had not taken place due to the rash and negligent driving of the motorcyclist, Vinod Kumar with whom the deceased/insured was pillion rider or the same had taken place due to consumption of alcohol by the deceased/insured or that he was negligent in any manner, which resulted in causing the said accident, rather it stands proved on record that the said accident had taken place due to the rash and negligent driving of the driver of the unknown vehicle who, after hitting the subject motorcycle, on which the deceased was pillion rider, had sped away from the spot, especially when the contents of the FIR are unrebutted by the OPs by leading any evidence to prove that due to the consumption of alcohol by the deceased, the said accident had taken place.
- ix. Moreover, the claim of the complainants is not covered under general exclusion i.e. clause No.4 of the subject policy as it has come on record that the said accident has no nexus with the deceased/insured, even if he was under the influence of alcohol at the time accident, since it stands proved on record that the accident had not taken place due to the rash and negligent driving of the motorcyclist or due to the consumption of alcohol, if any, by the insured.
- x. In view of the foregoing it is safe to hold that OPs were unjustified in repudiating the claim of complainants, who are the successors/legal heirs of the insured/deceased, and the said act amounts to deficiency in service on their part and, therefore, the present consumer complaint deserves to succeed.
- xi. Now coming to the quantum of relief to be awarded to the complainants, since as per the subject policy complainants are entitled to the coverage of ₹25,00,000/- in case of accidental death; ₹2,50,000/- for dependent child education and ₹25,000/- as Last Rites Costs totaling to ₹27,75,000/-, which has also not been disputed by the OPs, they are liable to pay the said amount to the complainants alongwith interest and compensation etc. for the harassment suffered by them.
4. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OPs are directed as under :-
- to pay the aforesaid amount ₹27,75,000/- to the complainants alongwith interest @ 9% per annum from the date of repudiation of the claim i.e. 16.2.2021 onwards.
  - to pay an amount of ₹30,000/- to the complainants as compensation for causing mental agony and harassment to them;
  - to pay ₹10,000/- to the complainants as costs of litigation.
5. This order be complied with by the OPs within forty five days from the date of receipt of its certified copy, failing which, the payable amounts, mentioned at Sr.No.(i) & (ii) above, shall carry interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(iii) above. It is, however, made clear that out of the aforesaid awarded amounts, ₹5,00,000/- each shall be paid to the three minor children (i.e. complainants No.2 to 4) and the remaining amount shall be paid to complainant No.1. It is further clarified that in case any of the complainant(s) is still minor, the awarded amount in respect of him/her shall be deposited with this Commission, which will be invested in the shape of FDR(s), and be released to him/her only upon attaining the age of majority.
6. Pending miscellaneous application(s), if any, also stands disposed of accordingly.
7. Certified copies of this order be sent to the parties free of charge. The file be consigned.

Announced

Sd/-

03/11/2023

[Pawanjit Singh]

hg

President

Sd/-

[Surjeet Kaur]

Member

**Sd/-**

**[Suresh Kumar Sardana]**

**Member**