
(2012) 08 DEL CK 0065
In the Delhi High Court
Case No : Mac. Apr. 498 of 2007

Ajit Singh and Another

APPELLANT

Vs

Paramjit Singh and Others

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1988 — Section 149(2), 149(2)(a)(i)(ii), 149(2)(a)(ii), 157, 166

Citation : (2012) 5 ILR Delhi 776

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Amita Kapoor, for the Appellant; Pradeep Gaur, with Mr. Vineet Mishra, Advocate for R-2, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—These two Appeals (MAC APP. 498/2007 and MAC APP. 592/2007) arise out of a common judgment dated 02.07.2007 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 19,00,000/- lacs along with interest @ 6% per annum was awarded in favour of the Appellants and Respondent No. 3 for the death of Anupam Chaudhary, a young boy aged 28 years. For the sake of convenience, the Appellants in MAC APP. 498/2007 shall be referred to as the Claimants and Appellant in MAC APP. 592/2007 shall be referred to as the Insurer.

2. The Claimants, grievance is that the compensation awarded is on the lower side as the Claimants were entitled to an addition of 50% towards future prospects as the deceased was a meritorious boy in permanent employment with M/s. UBICS Enterprises Solution Pvt. Ltd. The Claims Tribunal erred in applying the multiplier of "8" which should have been "17" as per the age of the deceased.

3. On the other hand, the Insurer's plea is that it had successfully proved the breach of the terms of policy and thus, it was entitled to be exonerated or in any case was entitled to recovery rights.

4. First of all, the quantum of compensation.

5. Hema Bisht (Ms.) Senior Executive Finance, UBICS was examined as PW-2. She proved the deceased's appointment letter Ex. PW-2/1. She deposed that the deceased's joined UBICS on 29.10.2003 and was made permanent with effect from 22.03.2004. The deceased's salary without transport allowance was proved to be Rs. 31,700/-.

6. The Claimants undoubtedly are entitled to an addition of 50% towards future prospects. (See Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,).

7. A Claim Petition u/s 166 of the Act was filed by the deceased's parents who also filed the Appeal (MAC 498/2007). The deceased suffered fatal injuries in the accident just on 24th day after his marriage. Anamika Chaudhary (Ms.) was a young widow. She preferred not to join as a Petitioner in the Claim Petition. She preferred not to appear as a witness before the Claims Tribunal. The Claims Tribunal opined that Anamika Chaudhary became widow after 24 days of her marriage and in all probabilities she would have married.

8. Although, the prospects of remarriage are not considered as a ground to deny, refuse or even reduce the award of compensation even if the widow is young. However, where a widow remarries, she is not entitled to the grant of compensation after her remarriage. In Vijay and Others Vs. Lakhmi Chand Jain and Others, , a contention made on prospect of re-marriage as a ground for reduction of compensation was rejected, but it was held that if by additional evidence, it was proved that the widow had remarried, the same could have affected the award of compensation. In The Oriental Fire and General Insurance Company Limited Vs. Shrimati Chandrawati and Others , Allahabad High Court held that a widow is not entitled to compensation after she remarries. In Tarkeshwar Yadav Vs. Santosh Yadav, , this Court held that "It would be appropriate if the loss of dependency is confined to the period from the date of the accident till the date of remarriage of the widow". As stated earlier Anamika Chaudhary preferred not to appear and not to join the Petitioner in the Claim Petition. She preferred to be proceeded ex-parte. She did not file any Appeal against the impugned judgment. In the circumstances, it would be reasonable to draw an inference that she has re-married and has therefore, not come forward either before the Claims Tribunal or in this Appeal.

Thus, she would not be considered as a dependent after the date of her remarriage.

9. In case of death of a bachelor deduction of 50% is made. In the instant case, the deceased married just 24 days before unfortunate death. As stated earlier, an inference has to be drawn that the widow has re-married. The date when she got re-married is not known. She, therefore, cannot be deprived of the total compensation thus instead of making deduction of 50% towards personal and living expenses, the Claims Tribunal rightly, made deduction of one-third in order

to award some compensation to the widow.

10. At the same time, the appropriate multiplier would be according to the age of deceased's mother as the widow had re-married. As per the statement dated 29.08.2005 made by Ajit Singh, the deceased's father, the deceased's mother Jagbiri Devi (the Claimant) was aged 55 years on 29.08.2005. Thus, she was aged about 54 years on the date of the accident. The appropriate multiplier, in the circumstances, would be "11" as against "8" adopted by the Claims Tribunal.

11. Applying the principle laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the loss of dependency would come to Rs. 38,54,400/- ($31,700/- \times 12 = 3,80,400/- - 30,000/-$ (income tax) = 3,50,400/- + $50\% \times 2/3 \times 11$).

12. On adding a notional sum of Rs. 25,000/- towards loss of love and affection and Rs. 10,000/- each towards loss of consortium, loss to estate and funeral expenses, the overall compensation comes to Rs. 39,09,400/-.

13. The overall compensation is enhanced from Rs. 19,00,000/- to Rs. 39,09,400/-.

14. Thus, there is enhancement of Rs. 20,09,400/- which shall carry interest @ 6% per annum from the date of filing of the Petition till the date of award and @ 7.5% per annum from the date of filing of the Appeal till its payment.

15. In the Claim Petition filed by the Claimants, Respondent No. 1 was impleaded as driver and registered owner. Respondent No. 2 as the Insurer, Respondent No. 3 as the deceased's widow and Respondent No. 4 as the Insurer.

16. In Para 23 (13), the Claimants averments that Respondent No. 1 was the registered owner and he got the offending truck released on Superdari were not challenged by Respondent No. 1 by filing any written statement rather he was ordered to be proceeded ex-parte. The fourth Respondent was the Insured and certificate of Insurance was not transferred in the name of the First Respondent.

17. As per Section 157 of the Act on transfer of the vehicle the Certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. Although, the registration certificate has not been placed on record but in view of the unchallenged averments it stands established that the Respondent No. 1 was the driver and registered owner of the vehicle.

18. It is the case of the Insurer that the first Respondent committed willful breach of the terms of the policy as his driving licence was proved to be forged. Respondent No. 1 has not come forward with any explanation with regard to his driving licence and in the circumstances, the Appellant Insurance Company is entitled to avoid the Insurance policy on account of statutory defence available u/s 149(2)(a)(ii) of the Act.

19. The Appeal must succeed on this ground.

20. The Insurer's application for additional evidence was allowed by this Court by order dated 20.05.2001. In pursuance thereof, the Insurer examined Mahmood, a Junior Clerk from Regional Transport Office, Dehradun, Uttarakhand as AW-1 who deposed that the driving licence No. 36925/UA dated 12.06.2003 was issued in the name of the Raghuvir Singh son of Sh. Ranjeet Singh and not in the name of the First Respondent. In cross-examination, he deposed that the driving licence with "UA" series pertains to computerized records. In the year 2003 the licences were issued under "D" series and not under "UA" series. He also proved copy of the driving licence No. 36925/D/2003 which was issued on 12.06.2003 as Ex. AW-1/3. Driving licence No. 42655/D/2003 (Ex. AW-1/1) which was issued on 24.10.2003 and the driving licence No. 42656/D/2003 (Ex. AW-1/2) which was issued on 28.10.2003.

21. A notice under Order XII Rule 8 CPC served upon the First Respondent to produce the driving licence was proved as Ex. R2W-1/1. The First Respondent neither contested the Claim Petition nor the Appeal nor came forward with any driving licence which was valid on the date of the accident. The driving licence which was seized by the police was proved to be fake. In the circumstances, an adverse inference has to be drawn against the First Respondent that had he been in possession of a valid driving licence, he would have produced the same. I am supported in this view by a judgment of the learned Single Judge of this Court in New India Assurance Co. Ltd. and Others Vs. Sanjay Kr. and Others etc. etc., , where it was held as under:-

23. Where the assured chooses to run away from the battle i.e. fails to defend the allegation of having breached the terms of the insurance policy by opting not to defend the proceedings, a presumption could be drawn that he has done so because of the fact that he has no case to defend. It is trite that a party in possession of best evidence, if he withholds the same, an adverse inference can be drawn against him that had the evidence been produced, the same would have been against said person. As knowledge is personal to the person possessed of the knowledge, his absence at the trial would entitle the insurance company to a presumption against the owner.

24. That apart, what more can the insurance company do other than to serve a notice under Order 12 Rule 8 of the CPC calling upon the owner as well as the driver to produce a valid driving licence. If during trial such a notice is served and proved to be served, non response by the owner and the driver would fortify the case of the insurance company.

22. It is well settled that even in case of conscious and willful breach of the terms of the policy, the Insurer has statutory liability to satisfy the award in favour of third party.

23. The issue of satisfying the third party liability even in case of breach of the terms of insurance policy is settled by three Judge Bench report in Sohan Lal Passi Vs. P. Sesh Reddy and others, . As per Section 149(2) of the Motor Vehicles

Act (the Act), an insurer is entitled to defend the action on the grounds as mentioned u/s 149(2)(a)(i)(ii) of the Act. Thus, the onus is on the insurer to prove that there is breach of the condition of the policy. It is well settled that the breach must be conscious and willful. Even if a conscious breach on the part of the insured is established, still the insurer has a statutory liability to pay the compensation to the third party and will simply have the right to recover the same from the insured/tortfeasor either in the same proceedings or by independent proceedings as the case may be, as ordered by the Claims Tribunal or the Court. The question of statutory liability to pay the compensation was discussed in detail by a two Judge Bench of the Supreme Court in *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, where it was held that exclusion clause in the contract of Insurance must be read down being in conflict with the main statutory provision enacted for protection of victim of accidents. It was laid down that the victim would be entitled to recover the compensation from the insurer irrespective of the breach of the condition of policy. The three Judge Bench of the Supreme Court in *Sohan Lal Passi* analyzed the corresponding provisions under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in *Skandia*. In *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, the Supreme Court referred to the decision of the two Judge Bench in *Skandia*, the three Judge Bench decision in *Sohan Lal Passi* and held that the insurer who has been made liable to pay the compensation to third parties on account of issuance of certificate of insurance, shall be entitled to recover the same if there was any breach of the policy condition on account of the vehicle being driven without a valid driving licence. The relevant portion of the report is extracted hereunder:

21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

23. It is advantageous to refer to a two-Judge Bench of this Court in *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, . Though the said

decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judge pointed out that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become suffers on account of accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident This is the *raison d'être* for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance.

24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, .

25. The position can be summed up thus:

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.....

24. Again in *United India Insurance Company Ltd. Vs. Leheru and Others*, , in para 18 of the report the Supreme Court referred to the decision in *Skandia*, *Sohan Lal Passi* and *Kamla* and held that even where it is proved that there was a conscious or willful breach as provided u/s 149(2)(a)(ii) of the Motor Vehicle Act, the Insurance Company would still remain liable to the innocent third party but may recover the compensation paid from the insured. The relevant portion of the report is extracted hereunder:

18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in *Skandia* and *Sohan Lal Passi* cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance....

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20.....If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view.

25. The three Judge Bench of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, again emphasized that the liability of the insurer to satisfy the decree passed in favour of the third party was statutory. It approved the decision in Sohan Lal Passi, Kamla and Lehu. Paras 73 and 105 of the report are extracted hereunder:

73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

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105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

26. This Court in MAC APP. No. 329/2010 Oriental Insurance Company Limited v. Rakesh Kumar and Others and other Appeals decided by a common judgment dated 29.02.2012, noticed some divergence of opinion in National Insurance Co. Ltd. Vs. Kusum Rai and Others, , National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, ; Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, and Premkumari and Others Vs. Prahlad Dev and Others, and held that in view of the three Judge Bench decision in Sohan Lal Passi (supra) and Swaran Singh, the liability of the Insurance Company vis-?-vis the third party is statutory. If the Insurance Company successfully proves the conscious breach of the terms of the policy, then it would be entitled to recovery rights against the owner or driver, as the case may be.

27. In the circumstances, I am of the view that the liability of the Insurance Company to satisfy the award in the first instance is statutory. It is bound to satisfy the same and entitled to recover the amount of compensation paid from the driver and the owner (Respondent No. 1) in execution of this very judgment without having recourse to independent civil proceedings.

28. The enhanced compensation of 20,09,400/- along with interest shall be equally apportioned amongst the Claimants and the Third Respondent.

29. 80% of the enhanced compensation shall be held in fixed deposit for a period of two years, four years and six years in equal proportion. Rest shall be released on deposit.

30. The National Insurance Company Limited Respondent No. 2 in MAC APP. 498/2007 is directed to deposit the enhanced compensation with the Claims Tribunal within six weeks.

31. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company.

32. The Appeals are allowed in above terms. Pending Applications stand disposed of.