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**(2012) 05 DEL CK 0553**  
**In the Delhi High Court**  
**Case No : MAC. App. 241 of 2012**

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|----------------------------------------|------------|
| Bajaj Allianz General Insurance Co Ltd | APPELLANT  |
| Vs                                     |            |
| Haider Ali and Others                  | RESPONDENT |

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**Date of Decision :** 28-05-2012

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149(2), 149(2)(a)(ii)

**Citation :** (2012) 05 DEL CK 0553

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

**Bench :** Single Bench

**Advocate :** Khalid Arshad, for the Appellant; N.K. Singh, for the Respondent

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## Judgement

G. P. Mittal, J.—The Appellant Bajaj Allianz General Insurance Company Ltd. impugns a judgment dated 22.12.2011 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of Rs. 3,75,000/- was awarded in favour of the First Respondent for the death of a minor child aged 10 years and a student of 3rd Standard. The following contentions are raised on behalf of the Appellant Insurance Company:

- (i) Notional income of Rs. 15,000/- should not have been taken in the case of death of a child.
- (ii) Deduction of 1/3rd should have been made towards personal and living expenses.
- (iii) Instead of granting recovery rights, the Appellant should have been completely exonerated as it successfully established the breach of the terms of the insurance policy.

2. In Manju Devi v. Musafir Paswan, VII (2005) SLT 257, the Supreme Court awarded a compensation of Rs. 2,25,000/- in respect of death of a 13 years old boy by applying a multiplier of "15" and taking the notional income of the deceased's child as Rs. 15,000/- per month. The said case related to an accident

which occurred in 1998, deduction of 1/3rd towards personal and living expenses was not made in the said case.

3. Following Manju Devi(supra), this Court in Shyam Narayan Vs. Kitty Tours Travels and Others, awarded a compensation of Rs. 2,25,000/- towards loss of dependency and Rs. 50,000/- on account of loss of company of the child. In R.K. Malik and Others Vs. Kiran Pal and Others, , this Court granted a compensation of Rs. 75,000/- towards non-pecuniary damages which on Appeal to the Supreme Court in R.K. Malik and Another Vs. Kiran Pal and Others, were approved. The Hon"ble Supreme Court further awarded a compensation of Rs. 75,000/- towards future prospects for death of each of the child.

4. All these cases were considered by this Court in National Insurance Co. Ltd. Vs. Farzana and Others, and a compensation of Rs. 3,75,000/- ( Rs. 2,25,000/- towards loss of dependency, Rs. 75,000/- towards non-pecuniary damages and Rs. 75,000/- towards future prospects) was awarded. The award of Rs. 3,75,000/- made by the Claims Tribunal is based on settled law and does not call for any interference.

5. As far as the breach of the terms of the insurance policy is concerned, it is well settled that even if the Insurance Company is able to prove a willful and conscious breach on the part of the insured, it has a statutory liability to pay the compensation to the third party and would have right to recover the same from the insured.

6. 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 Vs. P. Sesh Reddy and others, analyzed the corresponding provision under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in Skandia (supra). 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(supra), the three Judge Bench decision in Sohan Lal Passi(supra) and held that the insurer who has been made liable to pay the compensation to third parties on account of certificate of insurance issued, 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...

7. Again in *United India Insurance Company Ltd. Vs. Lehu and Others*, of the report the Supreme Court referred to the decision in *Skandia(supra)*, *Sohan Lal Passi(supra)* and *Kamla(supra)* 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.

8. 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 (supra), Kamla (supra) and Lehu (supra). Para 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.

9. 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 Malla Prakas Rao Vs. Malla Janaki and Others, 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, on the one hand and S Sohan Lal Passi Vs. P. Sesh Reddy and others, New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., United India Insurance Company Ltd. Vs. Lehu and Others, National Insurance Co. Ltd. Vs. Swaran Singh and Others, , Oriental

Insurance Co. Ltd. Vs. Zaharulnisha and Others, National Insurance Co. Ltd. Vs. Geeta Bhat and Others, , and National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, on the other hand and held that in view of the three Judge Bench decision in Sohan Lal Passi(supra) and Swaran Singh(supra), 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.

10. In view of the discussion, it is clear that the Insurance Company was entitled to recovery rights which have been duly granted.

11. The learned counsel for the Appellant Insurance Company relied on the Supreme Court judgment in National Insurance Co. Ltd. Vs. Parvathneni and Another, to urge that the question of liability of the Insurance Company to satisfy the award even in the first instance has been referred to a larger Bench. In Parvathneni(supra), the question which was posed by the Supreme Court was the liability to pay the compensation where the cheque of the premium amount is dishonoured, which is not the case here.

12. In view of the foregoing discussion, the Appeal is bound to fail; the same is accordingly dismissed.

13. No costs.

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14. The amount of compensation as granted shall be released to the First Respondent in terms of order passed by the Claims Tribunal.

15. The Applications stand disposed of accordingly. The statutory amount of Rs. 25,000/- shall be refunded to the Appellants Insurance Company.