

(2012) 12 DEL CK 0065
In the Delhi High Court
Case No : MAC. App. 596 of 2009

Chandeswar Chaudhary and Others

APPELLANT

Vs

Vaij Nath Chaudhary and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 14(2)(b), 149(2), 149(2)(a)(i)(ii), 149(2)(a)(ii), 15

Citation : (2013) 1 ACC 312

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

Bench : Single Bench

Advocate : A.C. David with Mr. A.K. Chaudhary, for the Appellant; Ranjan Roy, Advocate for the Respondent No. 1, Mr. Gulshan Kumar, Advocate for the Respondent No. 2 and Mr. Ram N. Sharma, Advocate for the Respondent No. 3 Insurance Company, for the Respondent

Judgement

G.P. Mittal, J.—The Appeal is directed against a judgment dated 19.09.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby in a Petition u/s 163-A of the Motor Vehicles Act, 1988(the Act) a compensation of Rs. 2,60,500/- was awarded for the death of Sanjeev Kumar, a bachelor aged 15½ years who was working as a helper with a private company. During inquiry before the Claims Tribunal, it was claimed that deceased was earning Rs. 3,000/- per month. The Claims Tribunal, however, held that the compensation can be awarded on the minimum wages of an unskilled worker which was Rs. 2,000/- per month on the date of the accident. The Claims Tribunal thus deducted 1/3rd towards personal and living expenses and applied a multiplier of 16 to compute the loss of dependency as Rs. 2,56,000/-. The Claims Tribunal further awarded a sum of Rs. 2,000/- towards funeral expenses Rs. 2,500/- towards loss to estate. The Claims Tribunal further found that the driving licence held by the driver (Respondent No. 3) had expired on 03.05.2002; this accident took place on 11.07.2002 and the licence was renewed much thereafter on 26.12.2003. Thus, the Claims Tribunal opined that since the driver did not hold a valid driving licence, the Insurance Company was not liable to pay the compensation awarded.

It, therefore, exonerated the Insurance Company and made the driver and the owner liable to pay the compensation.

2. There is twin challenge to the judgment. First, the compensation should have been awarded at least on the basis of minimum wages of an unskilled worker of Rs. 2,667/-. Secondly, even if there was breach of the terms and conditions of the policy, the Insurance Company was under obligation to perform its statutory liability vis-à-vis the third party. Thus, the Insurance Company should have been asked to pay the compensation and granted recovery rights if there was breach of the terms and conditions of the policy.

3. On the other hand, the learned counsel for the Respondents No. 1 and 2 supports the award on the ground that the compensation awarded is just and reasonable. The learned counsel for the Respondent No. 3 contends that since the breach of the terms and conditions of the policy was proved, the Insurance Company was rightly exonerated.

4. The Appeal must succeed on both the grounds.

5. Deceased Sanjeev Kumar was an adolescent and was, therefore, entitled to work in non-hazardous work place. In fact, the Claims Tribunal awarded compensation on the basis of minimum wages as fixed by the Government of NCT of Delhi which was taken as Rs. 2,000/- per month instead of Rs. 2,667/- per month. Therefore, taking the minimum wages as Rs. 2,667/-, the loss of dependency comes to Rs. 3,41,376/- (Rs. 2,667/- x 12 x 2/3 x 16).

6. As far as liability is concerned, it is established that the licence was got renewed much after a period of 30 days. As per proviso to Section 14(2)(b), the licence remains effective for a period of 30 days from the date of expiry. The extended period of 30 days came to an end on 21.06.2002. The licence was renewed only on 26.12.2003. As per Section 15 if the licence is not renewed within 30 days from the date of expiry, its validity will be effective from the date of its renewal. Thus, practically the First Respondent was without a driving licence for the period 04.05.2002 to 25.12.2003.

7. Section 3 prohibits a person to drive a motor vehicle in any public place unless he holds "an effective driving licence issued to him authorizing him to drive the vehicle." On the other hand, Section 149(2)(a)(ii) lays down that the Insurance Company is permitted to defend an award given by the Claims Tribunal if there has been a breach to satisfy condition of policy and one of such condition is "a condition excluding driving by a named person or persons or by any person who is not duly licensed".

8. In National Insurance Company Limited v. Jarnail Singh & Ors., (2007) 15 SCC 28 and in New India Assurance Co. Ltd. Vs. Suresh Chandra Aggarwal, , the Supreme Court held that if the driving licence is renewed after a period of 30 days of the expiry of the driving licence, it would be effective only from the date of its renewal and the driver of the vehicle shall be deemed to be without a

driving licence in the interregnum and the Insured would be guilty of breach of the condition of policy as envisaged u/s 149 (2) (a) (ii) of the Act.

9. Thus, the Insurance Company duly proved the breach of the terms and conditions of the policy. Otherwise also, the finding on breach of the terms and conditions is not challenged by the Respondents No.1 and 2(the driver and owner). Thus, the Respondent No. 3 Insurance Company can avoid the liability of the insured except to satisfy its statutory liability.

10. 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 an 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.....

11. Again in *United India Insurance Company Ltd. Vs. Lehu 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.

12. 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.

13. This Court in Oriental Insurance Co. Ltd. and Others Vs. 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.

14. Thus, the Respondent No. 3 shall be bound to pay the compensation to the Appellant but shall be entitled to recover the same from Respondent No.1, the driver of the offending vehicle and Respondent No. 2, being the owner of the offending vehicle in execution of this very judgment without having recourse to independent recovery proceedings.

15. In view of the above, the enhanced compensation of Rs. 85,376/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment. The enhanced amount shall be payable to the Appellants in equal shares. 75% of the amount shall be held in fixed deposit for a period of two years, rest shall be released on deposit.

16. The enhanced amount of Rs. 85,376/- along with interest shall be deposited by the Respondent No. 3 Insurance Company with the Claims Tribunal within six weeks.

17. The Appeal is disposed of in above terms. Pending Applications stand disposed of.