
(2012) 09 DEL CK 0337
In the Delhi High Court
Case No : MAC. APP. 844 of 2011

Iffco Tokio General Insurance Co. Ltd.	APPELLANT
Vs	
Smt. Sehnaz and Others	RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1988 — Section 10, 149, 149(2), 149(2)(a)(i)(ii), 149(2)(a)(ii)

Citation : (2013) 1 ACC 284

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

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Nitin Kalra, for R-7 and 8, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant IFFCO Tokio General Insurance Company Ltd. impugns a judgment dated 18.07.2011 passed by Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 9,51,284/- was awarded in favour of the Respondents No. 1 to 6 for the death of Guddu @ Sartaz, who died in a motor vehicle accident which took place on 02.05.2007. The finding on negligence is not challenged by the Appellant Insurance Company.

2. There is twin challenge to the impugned judgment. First, that the compensation awarded towards non pecuniary damages, that is, loss of love and affection, loss of consortium, loss to estate and funeral expenses is on the higher side; and second, that the Appellant Insurance Company successfully proved the breach of the terms of policy, yet instead of passing a specific order granting recovery rights to the Appellant, the Claims Tribunal held that "at the most recovery rights, if any may be given to R-3." It is thus, urged that the Claims Tribunal's order with regard to the recovery rights was completely vague.

3. After the accident, the deceased was removed to the Trauma Centre and succumbed to his injuries on 04.10.2007. The award of compensation towards

loss of dependency, towards expenditure of medical treatment and pain and suffering is not disputed.

4. The Claims Tribunal awarded a sum of Rs. 1,50,000/- towards loss of love and affection, that is, Rs. 25,000/- each to the six dependents. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only.

5. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Supreme Court laid down that only a notional sum of Rs. 5,000/- to Rs. 10,000/- should be awarded towards loss of consortium, loss to estate and actual expenditure towards funeral expenses should be given to the Claimants. No evidence with regard to the expenditure towards funeral expenses was led by the Claimants. In the circumstances, I award a sum of Rs. 10,000/- each towards loss of consortium, loss to estate and funeral expenses as against an award of Rs. 50,000/-, 15,000/- and Rs. 25,000/- respectively.

6. The Claims Tribunal awarded a sum of Rs. 55,000/- towards medical bills, special diet and conveyance and a sum of Rs. 50,000/- towards pain and suffering. The same is maintained.

7. The overall compensation thus comes to Rs. 7,66,284/-.

8. The Appellant took up a plea that the driver Satya Prakash (Respondent No. 7) did not possess a valid driving licence to drive the offending vehicle, that is, Vikram Goods Carrier No. DL-1LF-0322. I have before me the evidence led by the Appellant before the Claims Tribunal. Paras 16 to 18 of the judgment dealt with the issue, the same are extracted hereunder:-

16. R3W1 Sh. Abhishek Kujur, Executive Legal, IFFCO Tokio General Insurance Company Ltd. has tendered his evidence by way of Affidavit Ex.R3W1/A. This witness has also relied upon documents Ex.R3W1/1 to Ex.R3W1/7.

17. R3W2 Sh. Pratap Singh, Dealing Assistant, MLO North East, Zone-1, Wazirpur, Delhi has brought the summoned record regarding the licence No. C08041999115495 which is Ex.R3W2/A and Ex.R3W2/B issued in the name of Sh. Satya Prakash s/o Sh. Inderpal. This witness has deposed that the said licence was entitled for driving LMV (NT) and TSR and the said vehicle was not valid for driver the LGV.

18. R3W3 Sh. Dharampal, Record Keeper, RTO Office, Burari, Delhi has proved the record regarding the vehicle No. DL1LF-0322 which is Ex.R3W3/A which was issued in the name of Sh. Omkar Singh s/o Sh. Omprakash r/o 9A/680, Lal Bagh, Azadpur, Delhi. This witness has further deposed that said vehicle is LGV as per

RC and the vehicle (VIKRAM) fall in commercial category.

9. R3W1 Sh. Abhishek Kujur, Executive Legal of the Appellant Insurance Company also proved the insurance policy Ex.R3W1/1, copy of the notice under Order XII Rule 8 CPC requiring the owner and driver to produce the insurance policy and the driving licence as Ex.R3W1/2. His testimony was not challenged in cross-examination as Respondents No. 7 and 8 preferred to be proceeded ex-parte. They failed to produce any driving licence other than Ex.R3W2/A by virtue of which Respondent No. 7 was permitted to drive only LMV (NT), that is, non-transport and a TSR. R3W2 Pratap Singh was categorical that the holder of this driving licence was not permitted to drive LGV (light goods vehicle). It is proved from the RC Ex.R3W3/A and R3W3's testimony that the offending vehicle was LGV.

10. Thus, the Appellant led sufficient evidence to discharge the initial onus in order to prove the breach of the terms of policy. Respondents No. 7 and 8 (the driver and owner of the offending vehicle) filed a joint written statement contesting the Claim Petition. They did not produce any driving licence other than the one which was seized by the police and was placed on record by Respondents No. 1 to 6. During the hearing of the Appeal, the learned counsel for Respondents No. 7 and 8 does not even dispute the said driving licence. His only contention is that on the strength of the driving licence Ex.R3W2/A, Respondent No. 7 was authorized to drive a light goods vehicle (LGV).

11. As per Section 149 of the Motor Vehicles Act, 1988 (the Act) as in terms of the insurance policy, the Appellant Insurance Company is entitled to avoid the policy on proving the breach of the condition that the driver was not duly licensed.

12. Admittedly, Respondent No. 7 did not possess any driving licence to drive a Light Motor Transport Vehicle, that is LGV in the instant case.

13. A Light Motor Vehicle is defined u/s 2(21) as a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kg. A "transport vehicle" on the other hand has been defined u/s 2(47) as a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Section 10 of the Act says every learner's licence and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government. A learner's licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following class. Section 10 of the Act is extracted hereunder:-

10. Form and contents of licences to drive.

(1) Every learner's licence and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;
- (e) transport vehicle;
- (i) road-roller;
- (j) motor vehicle of a specified description.

14. Thus, in order to entitle Respondent No. 7 to drive a light goods vehicle, he ought to have held licence for transport vehicle or at least for light motor transport vehicle. On the other hand, he possessed a licence to drive Light Motor Vehicle (NT) and a TSR.

15. A reference may be made to the report of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, where the Supreme Court emphasized that the driver must possess licence for the type of vehicle which is involved in the accident. Para 89 of the report is extracted hereunder:-

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another

type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

16. In the instant case, it is no where the case of Respondents No. 7 and 8 that the accident was caused on account of some mechanical failure or any other similar cause, having no nexus with the driver not possessing requisite type of licence. Thus, the Insurer is entitled to avoid the liability.

17. 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 Chandravan 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.....

18. 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.....

xxxx xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx xxxx

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.

19. 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 is 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.

xxxx xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx xxxx

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

20. 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.

21. In the circumstances, the Insurance Company is under obligation to satisfy the award in the first instance and to recover the amount of compensation from the driver and the owner of the offending vehicle (Respondents No. 7 and 8) in execution of this very judgment without having recourse to independent civil proceedings.

22. The excess amount of Rs. 1,85,000/- along with proportion interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

23. The compensation payable to Respondents No. 1 to 6 (the Claimants) shall be disbursed in terms of the order passed by the Claims Tribunal.

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

25. The Appeal is allowed in above terms. Pending Applications also stand disposed of.