

(2012) 12 DEL CK 0261
In the Delhi High Court
Case No : Mac. App. 1295 of 2012

L and T General Insurance Company Ltd.	APPELLANT
Vs	
Smt. Seema Gupta and Others	RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

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

Citation : (2013) 2 ACC 157

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

Bench : Single Bench

Advocate : Neerja Sachdeva, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

C.M. APPL No. 21268/2012(Exemption)

Exemption allowed, subject to all just exceptions.

The Application stands disposed of.

MAC. APP. 1295/2012

1. The Appellant Insurance Company impugns a judgment dated 22.09.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 41,21,284/- was awarded in favour of Respondents No. 1 to 5 for the death of Ramesh Dutta who died in a motor vehicle accident which occurred on 14.06.2011. The finding on negligence is not challenged by the Appellant Insurance Company; the same has attained finality.

2. There is twin challenge to the impugned judgment. First, the compensation awarded is on the higher side. Second, the driver of the offending vehicle was driving TATA 407 No. DL-1LK-5235 which was a commercial vehicle. He (the driver) possessed a driving licence to drive LMV (NT) only. Since he was not

entitled to drive a transport vehicle instead of granting recovery rights against the Appellant, it ought to have been exonerated.

3. I have perused the impugned judgment. The quantum of compensation was dealt in Paras 9 and 10 of the impugned judgment, which are extracted hereunder:-

9. The deceased, Sh. Ramesh Dutta was employed since 22.01.1980 with Ministry of Environment and Forest in the capacity of Technical Officer, GR.-1 as a Permanent employee with the salary with basic pay Rs. 22,940/- grade pay Rs. 4,800/-, special pay Rs. 350/-, transport allowance Rs. 1,600/-, DA on transport allowance Rs. 816/- and DA Rs. 1,417/- making total monthly emoluments of Rs. 44,653/- as per salary certificate Ex. PW2/1. Sh. Ram Tanwar posted as Section Officer/drawing and Disbursing Officer deposed as PW2 and proved documents such as salary certificate Ex. PW2/1, service details Ex. PW2/2, relevant extract from service book and office order Ex. PW2/3 collectively in support of the claim that the deceased was employed with Ministry of Environment and Forest for a monthly salary of Rs. 44,653/- but it also includes transport allowance and DA on it which shall be excluded and comes out to Rs. 42,237/-. It has been argued by claimants that deceased was availing the benefit of accommodation provided by Government and thus no HRA was being given to him. In case he had not availed the government accommodation, as per rules he was entitled to HRA equivalent to 30% of basic and grade pay. In this case such HRA would have been 30% of Rs. 22,940/- and Rs. 4,800/- i.e. Rs. 8,322/-. It is also to be appreciated that HRA is integral part of earnings of a salaried employee and for the purpose of the Motor Vehicles Act the important aspect is earning capacity of deceased at the time of accident. The deceased legally entitled for aforesaid HRA, even though due to certain reasons (government accommodation, he was drawing the same at the time of death but since she was entitled for the same, therefore, the aforesaid amount shall also be included in the earning capacity of the deceased. The deceased was aged 55 years (D.O.B. 18.03.1956) at the time of accident. The deceased was working as a permanent employee. In this case, the monthly emoluments of the deceased were Rs. 42,237/- and after adding house rent of Rs. 8,322/- for the purpose of calculating monthly income earned by the deceased, salary is taken to be Rs. 50,559/- per month. The annual at this rate comes to Rs. 50,559/- x 12= Rs. 6,06,708/- on which income tax for the assessment year 2012-13 comes to Rs. 54,942/-. After deducting income tax, annual income of deceased comes to Rs. 5,51,766/-. The age at the time of accident was 55 years, hence multiplier of 11 is applicable. So the loss of income is computed as Rs. 5,51,766/- x 11= Rs. 60,69,426/-.

10. The family members of deceased besides the wife and mother of deceased, there are three major children aged 28 years, 21 years and 19 years respectively. In these circumstances, when most of the children are of the age of majority and settled, the dependent family members would be wife, mother and at the most youngest son of 19 years. So 1/3rd of this amount is to be deducted

on account of personal expenses of the deceased which amount he would have spent on himself had he remained alive. This amount comes to Rs. 20,23,142/- (Rs. 60,69,426/- divided by 3) which is deducted from the sum calculated above. The loss of dependency therefore comes to Rs. 40,46,284/- (Rs. 60,69,426/- - Rs. 20,23,142/-) and petitioners are awarded the same.

4. Thus, it may be seen that deceased Ramesh Dutta was working as a Technical Officer Grade-I in the Ministry of Environment & Forest, Govt. of India on the date of the accident and was aged 55 years and 3 months. The Claims Tribunal rightly adopted a multiplier of 11. The contentions raised on behalf of the Appellant Insurance Company that the deceased was to retire in another five years, and therefore, the multiplier of 11 should not have been applied, is unacceptable. The practice of applying the split multiplier was deprecated by the Supreme Court in *Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another*, . Thus, the multiplier has been rightly applied. The award of compensation of Rs. 40,000/- on account of loss of love and affection cannot be said to be excessive, although the practice of the higher Courts is to award a compensation of Rs. 25,000/- only. The compensation cannot be said to be exorbitant and excessive.

5. 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.....

6. 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.....

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.

7. 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 Leheru. 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

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

8. 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-a-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.

9. The Appeal is devoid of any merit; the same is accordingly dismissed.

10. The Appellant Insurance Company is directed to deposit the amount of compensation with the Claims Tribunal within four weeks and file a report with the Registrar within six weeks.

11. The statutory deposit of Rs. 25,000/-, if any, shall be refunded to the Appellant Insurance Company after the compliance report is filed. Pending Applications stands disposed of.