

(2012) 05 DEL CK 0605

In the Delhi High Court

Case No : MAC.APP. 473 of 2007 and 518 of 2012

National Insurance Co. Ltd.

APPELLANT

Vs

Bhagat Ram Mittal and Others
 Bhagat Ram Mittal Vs
National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149(2), 149(4), 149(5), 4

Citation : (2012) 05 DEL CK 0605

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

Bench : Single Bench

Advocate : Pradeep Gaur, with Mr. Amit Gaur, Mr. Shashank Sharma, in MAC.app. 473/2007, Mr. O.P. Mannie, Adv in MAC.app. 518/2012, for the Appellant; O.P. Mannie, for R-1 in MAC.APP. 473/2007, Mr. Pradeep Gaur, with Mr. Amit Gaur, Mr. Shashank Sharma in MAC.APP. 473/2007 and 518/2012, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.

CM APPL 13203/2010

These are Cross Objections filed by Respondent No.1. It may be registered as an Appeal.

MAC.APP. 473/2007 and MAC APP.518/2012

1. The Appellant National Insurance Company Limited in MAC APP.473/2007 seeks exoneration from its liability to pay the compensation of Rs. 1,79,774/- awarded in favour of the First Respondent Bhagat Ram Mittal, the Appellant in Cross Appeal, who suffered injuries in a motor accident which occurred on 31.01.2005. Bhagat Ram Mittal, the First Respondent in MAC APP.473/2007 and Appellant in MAC APP. 518/2012 seeks enhancement of compensation on the ground that the compensation awarded is inadequate.

2. It is urged by the learned counsel for the Appellant Insurance Company that the Appellant successfully proved that Respondent No.2 Jabbar Singh driver of vehicle No.DL-IRF-9097 did not possess a valid driving licence at the time of the accident, yet instead of exonerating it from its liability, the Claims Tribunal only granted recovery rights from Respondents No.3 and 4 herein.

3. As per Section 149(2)(a), an insurer is entitled to defend the action on the grounds as mentioned u/s 149(2)(a)(i) 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 Chandravan 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.....

4. 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*(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.

5. 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, 103 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. xxx xxx xxx xxx xxx xxx xxx xxx xxx

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

6. 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(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.

7. The Appellant Insurance Company established the willful breach of the terms of policy and therefore, it was entitled to recovery rights which have been duly granted. The Appeal filed by the Insurance Company fails; the same is accordingly dismissed.

8. It is the time to refer to the Cross-Objections filed by the First Respondent.

9. The Claims Tribunal awarded a compensation of Rs. 2,35,774/- which is

tabulated hereunder:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

1.

Compensation for medical expenses

Rs. 1,06,695/-

2.

Compensation for Conveyance & Special Diet

Rs. 10,000/-

3.

Compensation for Permanent Disability

Rs. 33,079/-

4.

Compensation for Future Expenses

Rs. 31,000/-

5.

Compensation for Loss of Income

Rs. 25,000/-

6.

Compensation for Pain & Suffering and Loss of Amenities of Life

Rs. 30,000/-

Total

Rs. 2,35,774/-

10. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Supreme Court observed that the determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales. At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for

determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.

11. The Appellant suffered fracture of both bone left lower leg, abrasions and blunt injuries all over his body. He was admitted in Max Hospital on 31.01.2005 to 03.02.2005. He was shifted to Jaipur Golden Hospital and remained admitted there upto 08.02.2005.

12. The Appellant underwent surgery and screws were put to give strength to the bones. The Appellant made over a dozen visits to Dr. Raj Kumar. On 22.06.2005, the Appellant underwent another surgery as the fracture showed "delayed union". On 28.06.2005, the Appellant was readmitted to Jaipur Golden Hospital where plating and bone grafting was done on the left leg.

13. The Appellant deposed that he was working as a Commission Agent in the name and style of M/s. Ashok Kumar Anil Kumar, due to injuries suffered by him, he cannot run his business properly, he cannot walk properly, he cannot lift weight.

14. The Appellant was issued a Disability Certificate showing disability of 20% in respect of the left lower limb which the doctors stated to be 7.5% in respect of whole body which was accepted by the Claims Tribunal.

15. It is urged by the learned Counsel for the Appellant that the Claims Tribunal accepted the fact that the Appellant could not attend to his business for a period of six months, his (Appellant's) income on the basis of the Income Tax Return (ITR) Ex.PW-1/89 for the Assessment year 2005-06 was duly proved as Rs. 88,210/-, yet the Claims Tribunal awarded a compensation of just Rs. 25,000/-.

16. In my view, the Appellant (the injured) is entitled to be compensated for loss of actual income for six months which comes about to Rs. 44,105/- rounded off to Rs. 45,000/-. The compensation for loss of income is thus enhanced from Rs. 25,000/- to Rs. 45,000/-.

17. The Claims Tribunal awarded compensation of Rs. 33,079/- towards permanent disability. This was really towards loss of earning capacity. Claimants income was proved to be Rs. 88,210/- per annum. The loss of earning capacity would come to Rs. 46,310/- ($88210/- \times 7.5\% \times 7$), which is rounded off to Rs. 50,000/-.

18. A consolidated compensation of Rs. 30,000/- was awarded towards pain and suffering and loss of amenities in life. In my view, it would be appropriate to grant the compensation separately under the head of pain and suffering and loss of amenities in life.

19. It is difficult to measure in terms of money the pain and suffering which has been suffered by the claimant on account of serious injuries caused to him in a

motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment.

20. Considering the nature of injuries suffered, surgeries underwent, and duration of treatment, I award a sum of Rs. 30,000/- towards pain and suffering.

21. The Appellant's testimony that he cannot walk properly and he cannot lift weight was not challenged in the cross-examination. He has suffered permanent disability to the extent of 20% in respect of left lower limb which was assessed to be 7.5% in respect of whole body. There was shortening of his (the injured's) leg by 1.5 cm. Considering all these facts and that fact that the Appellant was aged 61 years, I would make an award of Rs. 40,000/- towards loss of amenities and disfigurement.

22. The compensation awarded is thus re-assessed as under:-

Sl. No.

Compensation under various heads

Awarded by this Court

1.

Compensation for medical expenses

1,06,695/-

2.

Compensation for Conveyance & Special Diet

10,000/-

3.

Compensation for Permanent Disability/ Loss of Earning Capacity

50,000/-

4.

Compensation for Future Expenses

31,000/-

5.

Compensation for Loss of Income

45,000/-

6.

Compensation for Pain & Suffering

30,000/-

7.

Loss of Amenities & Disfigurement

40,000/-

Total

3,12,695/-

23. The overall compensation is thus enhanced from Rs. 2,35,774/- to Rs. 3,12,695/-.

24. The enhanced compensation of Rs. 76,921/- rounded off to Rs. 77,000/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit in this Court.

25. Respondent National Insurance Company Limited is directed to deposit the enhanced amount along with interest in UCO Bank, Delhi High Court, New Delhi in the name of the Appellant.

26. On deposit, the amount shall be released to the Appellant immediately.

27. MAC APP.518/2012 filed by the injured Appellant is allowed in above terms. The statutory amount of Rs. 25,000/- deposited in MAC APP.473/2007 be refunded to the Insurance Company.