(2012) 07 DEL CK 0644

In the Delhi High Court

Case No : MAC.APP. 231 of 2011

National Insurance Co Ltd — APPELLANT

Vs

Jagminder Singh and Others — RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2)(a), 149(2)(a)(i)(c)

Citation : (2012) 07 DEL CK 0644

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

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant; R.P. Pahwa, for R-1 and R-2. Mr. Manoj Bhandari, with Mr. Jatinder Kamra, for R-3 to 6, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—The Appellant National Insurance Company Limited takes exception to a judgment dated 09.12.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs.13,93,210/- for the death of Sukhjinder Singh in a motor vehicle accident, which occurred on 01.06.2006, the Claims Tribunal held that the vehicle was being driven without a valid permit in the National Capital Territory (NCT) of Delhi and made the Appellant liable to pay the compensation with a right to recover the same from the Respondents No.1 and 2. The finding on negligence is not challenged by the Appellant, the driver and the owner of the vehicle. The driver and owner (Respondents No.1 and 2) have also not challenged the finding that the vehicle was being driven without a valid permit in the NCT of Delhi and thus there was breach of the condition of the policy u/s 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988 (the Act).

2. With regard to the payment of compensation to the third party even in case of conscious and willful breach of the terms of insurance policy, the issue is no longer res integra that the Insurer shall satisfy the decree vis-?-vis the third party.

3. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, the Supreme Court held that the liability of the Insurer to satisfy the decree passed in favour of third party is statutory. Paras 73, 104 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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104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company

to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time. 105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

4. Following Swaran Singh, (Supra) this Court in National Insurance Company Limited v. Sanjay Kumar, ILR, 2007 (2), Delhi, 733 held that even when breach of the terms and conditions of policy of insurance in terms of Section 149(2)(a) of the Motor Vehicle Act, 1988 is proved, the Insurance Company would still be required to pay the sum awarded to the Claimant, but would be entitled to the recovery rights against the insured.

5. In MAC APP 329/2010, Oriental Insurance Company Limited v. Rakesh Kumar and Others, decided on 3rd February, 2012, this Court noticed National Insurance Co. Ltd. Vs. Swaran Singh and Others, , Sohan Lal Passi Vs. P. Sesh Reddy and others, , New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and United India Insurance Company Ltd. Vs. Lehru and Others, and held that even when there is a willful breach of the terms of policy u/s 149(2)(a) of the Act, the Insurance Company is under obligation to indemnify the liability towards the third party and recover the same from the owner.

6. Thus, the Insurance Company was entitled to recovery rights against the Respondents No.1 and 2 which have been granted. It is clarified that the Appellant Insurance Company shall be entitled to recover the amount of compensation along with interest from Respondents No.1 and 2 in the execution of this very award without having resort to separate civil proceedings.

7. The Appeal is disposed of accordingly.

8. The statutory deposit of Rs.25,000/- shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.

