(2012) 03 DEL CK 0233

In the Delhi High Court

Case No : MAC App. No''s. 59 of 2010

National Insurance Co. Ltd. APPELLANT

Vs

Sanjay Kumar and Others RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2012) 03 DEL CK 0233

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

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant; Arvind Kumar Patel, Advocate For respondents no. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—These two appeals arise out of a common judgment dated 29th September, 2009 passed by the Motor Accident Claims Tribunal, New Delhi whereby Claim Petition no. 933/2004 and 934/2004 came to be decided. While granting a compensation of Rs. 42,400/- and Rs. 86,235/- in the two claim petitions respectively, the Claims Tribunal granted recovery rights against respondent no. 2, (Krishna Murari Dixit), the driver of the offending vehicle. The contention raised on behalf of the Appellant are :-

(i) The appellant ought to have been completely exonerated as there was breach of the terms of policy,

(ii) In any case, recovery rights ought to have been granted against the owner also i.e, the third respondent.

On the other hand, it is submitted by learned counsel for the second and the third Respondent that insurance company did have the liability to satisfy the award in the first instance.

2. The issue is no longer res integra that even in a case where the insurance

company establishes a conscious breach of the terms of the insurance policy, the liability of the insurer to satisfy the decree is statutory.

3. There is a authoritative pronouncement of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, para 73, 104 and 105 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.

x x x

x x x

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 New India Assurance Co. Ltd. and Others Vs. Sanjay Kr. and Others etc. etc., held that even when breach of the terms and conditions of policy of insurance and 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 No. 329/2010, Oriental Insurance Company Limited Vs. 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. In the circumstances, the Claims Tribunal was right in not exonerating the Appellant insurance company completely.

7. It is true that the second Respondent being driver is the principal tortfeasor yet the third Respondent being the owner of the offending vehicle was vicariously liable to pay the compensation to the victim of the accident. The Appellant insurance company was liable to indemnify the insured only on account of contract of insurance. Thus, the Appellant was entitled to recovery rights against the owner as well.

8. The Appeals are liable to be allowed. The Appellant will have recovery rights against the second and the third Respondent (the driver and the owner of the

offending vehicle).

9. The Appeals are allowed in the above terms. No costs.