
(2012) 05 DEL CK 0516
In the Delhi High Court
Case No : Mac. App. 608 of 2011

National Insurance Co Ltd.

APPELLANT

Vs

Shiv Kumari and Others

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 14, 149(2), 149(2)(a)(i)(ii), 149(2)(a)(ii)

Citation : (2012) 05 DEL CK 0516

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

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; Kundan Kumar Lal, Advocate for R-1 to R-3, for the Respondent

Final Decision : Allowed

Judgement

G. P. Mittal, J.—The short question falling for determination in this Appeal is whether the Respondent No. 4, (the owner and driver) of the vehicle No. DL-7CH-1204 committed willful breach of the terms of the policy as he was driving the vehicle without a valid licence or if the licence shall be deemed to be valid since a regular licence was issued after the payment of penalty. The Motor Accident Claims Tribunal (the Claims Tribunal) by impugned judgment dated 04.05.2011 awarded a compensation of Rs. 7,72,000/- for the death of Lal Bahadur Shastri.

2. The quantum of compensation and the negligence are not disputed by the Appellant.

3. The Claims Tribunal relied on the testimony of R2W1 Babu Lal, LDC from the Transport Authority to form an opinion whether the Fourth Respondent possessed a valid driving licence on the date of the accident. Paras 30 and 31 of the impugned judgment are extracted hereunder:-

"30. The Insurance Company has examined R2W1 Babu Lal, LDC from transport authority who has placed on record relevant information regarding Driving

Licence No. P09052007431427. He has deposed that the said driving licence was issued on 23.5.2007 on the basis of learning licence which was expired on 18.4.2007 and therefore on payment of penalty the licence was issued to Babul al on the basis of learning licence. He has placed on record the said information as Ex.R2W1/1 which is computerized record. He further deposed that above computerized record shows that the permanent licence has been issued on the basis of learning licence despite its expiry and on payment of penalty the learning licence was deemed to have continued till the permanent licence was issued to Babu Lal on 23.5.2007.

31. Therefore, Ld. Counsel for petitioner has argued that respondent no.1 Babulal, driver of the offending vehicle was having valid driving licence at the time of accident because the permanent licence which was issued on 23.5.2007 was issued on the basis of learning licence in the name of Babu Lal. No other evidence has been led by insurance company to show that the insured has committed breach of any terms and conditions of the insurance policy because respondent no.1 driver of the offending vehicle was having valid and effective driving licence at the time of accident. Therefore, Insurance Company is liable to reimburse the compensation amount to the insured because all the respondents including insurance company jointly and severally are liable to pay the compensation to be awarded in favour of the petitioners."

4. Certain facts are admitted. This accident took place on 13.05.2007. The learning licence held by the Fourth Respondent had expired on 18.04.2007. The said licence was valid for the period of 30 days after its expiry as per proviso to Section 14 of the Motor Vehicles Act. A regular licence was issued on 23.5.2007 on payment of penalty as the learner's licence had already expired on the date (23.5.2007) when a regular licence was issued. Thus, on the date of the accident, the Fourth Respondent did not possess neither a learner's licence nor a regular driving licence because the learner's licence has expired and a regular licence was issued subsequently.

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. 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*(supra) analyzed the corresponding provisions 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 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 detere* 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. Lehu and Others*, 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."

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 (supra), Kamla (supra) and Lehu (supra). 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.

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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 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 Malla Prakasarao Vs. Malla Janaki and Others, , National Insurance Co. Ltd. Vs. Kusum Rai and Others, , National Insurance Company Limited v. Vidhyadhar Mahariwala & Ors., (2008) 12 SCC 701; Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, and Premkumari and Others Vs. Prahlad Dev and Others, on the one hand and Sohan Lal Passi Vs. P. Sesh Reddy and others, , New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., United India Insurance Company Ltd. Vs. Lehu and Others, , National Insurance Co. Ltd. Vs. Swaran Singh and Others, Oriental Insurance Co. Ltd. Vs. Zaharulnisha and Others, , National Insurance Co. Ltd. Vs. Geeta Bhat and Others, , and National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, on the other hand 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.

9. The Insurance Company though had statutory liability to pay the compensation but it shall be entitled to recover the same from the Fourth Respondent, the owner-cum-driver of the offending vehicle No. DL-7CH-1204

10. The Appeal is allowed and the Appellant is granted recovery rights against Respondent No. 4 without initiating separate proceedings in the execution of this very judgment.

11. The amount deposited by the Appellant Insurance Company shall be disbursed in favour of Respondents No. 1 to 3 in terms of the order passed by the Claims Tribunal.

12. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. The Appeal is allowed in above terms.