
(2012) 05 DEL CK 0155
In the Delhi High Court
Case No : MAC. APP. 537 of 2012

New India Assurance Co. Ltd.

APPELLANT

Vs

Arun Gupta and Others

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1939 — Section 149(2), 149(4)

Citation : (2012) 05 DEL CK 0155

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

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant;

Final Decision : Dismissed

Judgement

G. P. Mittal, J.

CM APPL.8884/2012 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of

MAC. APP. 537/2012 and CM APPL.8883/2012 (stay)

1. Appellant New India Assurance Company Limited impugns a judgment dated 27.03.2012 whereby while awarding a compensation of Rs. 7,58,946/- in favour of Respondent No. 1, the Claims Tribunal instead of exonerating the Appellant, made it liable to pay the compensation and to recover it from Respondent No. 3, the owner of the vehicle No. HR-55-A-9460, which caused the accident. It is urged by the learned counsel for the Appellant that since it was established that Respondent No. 2 did not possess a valid and effective driving licence at the time of the accident, the Insurance Company has no liability to pay the compensation at all. My attention is drawn to para 19 of the impugned judgment which is extracted hereunder:-

19. I have gone through the material on record. It is apparent from the testimony of R3W1 and R3W2 that the respondent No. 1 was not possessing the valid driving licence at the time of accident. The report issued by DTO, Sonapat R3W1/B clearly shows that licence no. V32096/98 was not issued in the name of respondent no. 1. There is no evidence in rebuttal. Under the facts and circumstances, it is evident that the driver / respondent no. 1 was not possessing valid and effective driving licence at the time of accident which was the breach of terms and conditions of the policy, therefore, no liability can be fastened on insurance company. However, insurance company having admitted the policy will initially satisfy the award and shall be entitled to recover the awarded amount from the respondent no. 2.

2. Learned counsel for the Appellant places reliance on a judgment of the Supreme Court in National Insurance Company Ltd. Vs. Savitri Devi and Others etc.,

3. Savitri Devi (supra) relied on by the learned counsel for the Appellant is not applicable to the facts of the present case as in the said case, the owner/driver were carrying passengers in a goods vehicle. It is well settled by a three Judges Bench decision of the Supreme Court in New India Assurance Co. Ltd. v. Asha Rani, III (2002) ACC 753 that the risk of passengers carried in a goods vehicle (except the owner of the goods and his representative) is not covered by the policy of Insurance.

4. It was proved on record that a notice under Order XII Rule 8 CPC was served upon the owner who failed to produce the permit in the Court as required in the notice. 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'etre* 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.....

5. 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.

6. 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.

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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.

7. 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.

8. Thus, the Appellant was under statutory liability to satisfy the award vis-?-vis third party and was entitled to the recovery rights which have been duly granted.

9. The Appeal is devoid of any merit; the same is dismissed with cost of Rs. 10,000/- payable by the Appellant to Delhi High Court Legal Services Committee.

10. On deposit of Rs. 10,000/- as costs, the statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. Pending application also stands disposed of.