(2012) 05 DEL CK 0622

In the Delhi High Court

Case No : MAC. APP. No. 493 of 2012

New India Assurance Co. Ltd. — APPELLANT

Vs

Naresh Kumar and Others — RESPONDENT

Date of Decision : 07-05-2012

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

Citation : (2012) 05 DEL CK 0622

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

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

C.M. APPL No. 8227/2012(Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

MAC. APP. No. 493/2012 & CM. APPL No. 8226/2012(stay)

1. The Appellant New India Assurance Co. Ltd. impugns a judgment dated 03.03.2012 whereby while granting a compensation of Rs. 4,29,779/- in favour of the Respondent No. 1, the Appellant was made liable to pay the compensation in spite of the fact that it successfully proved the breach of the terms of the policy. It is urged by the learned counsel for the Appellant that since the Appellant proved the breach of the terms of the policy, it ought to have been exonerated from its liability to indemnify the insured instead of granting recovery rights.

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 vis-a-vis third party is statutory.

3. There is an authoritative pronouncement of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, 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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x 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 National Insurance Company Limited v. Sanjay Kumar, ILR 2007 (2) Del 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 Appellant was only entitled to recovery rights which have been granted.

7. The Appeal is devoid of any merit; the same is being dismissed accordingly.

8. The application pending, if any, is disposed of accordingly. The statutory amount of Rs. 25,000/-, if deposited, shall be refunded to the Appellant Insurance Company.

