(2012) 03 DEL CK 0433

In the Delhi High Court

Case No : MAC. APP. No. 352 of 2012

New India Assurance Co. Ltd. APPELLANT

Vs

Smt. Mehar Jahan and Others RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2), 149(2)(a), 149(2)(b), 149(4)

Citation : (2012) 03 DEL CK 0433

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

Bench : Single Bench

Advocate : Vishnu Mehra, for the Appellant;

Final Decision : Dismissed

Judgement

G. P. MITTAL, J.—The Appellant New India Assurance Company Limited impugns a judgment dated 13.12.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 9,24,000/-, the Appellant Insurance Company was directed to satisfy the award with the right to recover the same from the owner of the vehicle. The only ground of challenge is that since the violation of permit was established by the Appellant, the Insurance Company ought to have been totally exonerated of its liability. Reliance is placed on National Insurance Co. Ltd. Vs. Challa Bharathamma and Others,

2. The reliance on Challa Upendra Rao (supra) is misplaced. It was not laid down as a principle of law that the Insurance Company has no statutory liability to indemnify the Insured. In Challa Upendra Rao (supra) the Claims Tribunal had made the Insured liable to pay the compensation of Rs. 1,24,000/-. On an Appeal, the High Court held that the Insurer was liable to indemnify the Insured even in the cases where there was no permit at all. The Supreme Court went into the provision of Section 149 (2) (a) and Section 66 of the Motor Vehicles Act to emphasize the requirement of a permit and the defences available to the Insurance Company and held that a condition excluding the use of the vehicle, for a purpose not allowed by the permit, where the vehicle was a transport

vehicle, was one of the statutory defences available to the Insurance Company on which it could avoid liability.

3. The Supreme Court held that considering the beneficial object of the Act, it would be proper for the Insurer to satisfy the award though it had no liability.

4. This Court in MAC APP.329/2010 titled ''Oriental Insurance Co. Ltd. v. Rakesh Kumar & Ors.'' decided on 29.02.2012, noticed the judgments in Malla Prakasarao Vs. Malla Janaki and Others, 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, Premkumari and Others Vs. Prahlad Dev and Others, ; 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. Lehru 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, . This Court relied on Sohan Lal Passi Vs. P. Sesh Reddy and others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, to conclude that in case of breach of the condition of policy u/s 149 (2) (a) of the Act, the Insurance Company was under obligation to satisfy the decree in the first instance because of its statutory liability. This Court referred to and relied on Paras 73, 77, 83, 104, 105, 106 and 107 of Swaran Singh (supra) and opined that the Insurance Company can recover the compensation paid to the third party from the Insured in the same proceedings without filing a separate civil suit.

5. The extracts from the report in Swaran Singh (supra) are reproduced 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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77. In United Insurance Co. Ltd. v. Jaimy and Ors. 1998 ACJ 1318 (Ker.) it is stated:-

Section 149(2) relates to the liability of the insurer and speaks of a situation in regard to which no sum shall be payable by an insurer in respect of any judgment or award. In the context it is proved that an insurer to whom notice of bringing of any such proceeding is given, could defend the action stated in the said statutory provision. The contention in the context would be found in section 149(2)(a) in the event of a breach of a specified condition of the policy enabling the insurer to avoid liability in regard thereto. In the process in regard to the right of the insurer to recover the amount from the insured, it would have to be seen by referring to section 149(4) as to under what circumstances this can be successfully recovered from the insured.

Section 149(4) says that where a certificate of insurance is issued, so much of the said policy as purports to restrict the insurance of the persons insured thereby by referring to any of the conditions mentioned and it is precisely enacted in regard thereto that the liability covered by Section 2(b) as is required to be covered by the policy would not be available. The position is made further clear by the provisions enacting that any sum paid by the insurer in or towards the discharge of any liability of any person who is covered by the policy by virtue of this sub-section shall be recoverable by the insurer from that person.

In other words, section 149(4) considers the right of the insurance company in regard to re-imbursement of the amount paid by them only in the context of a situation other than the one contemplated u/s 149(2)(b). It would mean that except under the situation provided by Section 149(2)(b), the insurer would not be in a position to avoid the liability because he has got rights against the owner under the above provision.

The learned counsel strenuously submitted that this would not be the correct understanding and interpretation of the statutory provisions of section 149 of the 1988 Act. The learned counsel submitted that to read the statutory provision to understand that the insurance company could only claim from the owner in situations governed by section 149(2)(b) and to have no right under the said provision with regard to other situations u/s 149(2)(a) would not be the proper reading of the statutory provision. The learned counsel submitted that in fact the provision would have to be meaningfully understood. It is not possible to consider the submission of the learned counsel in the light of the plain language of the statutory provision. It is necessary to emphasise that under the new Act the burden of the insurance company has been made heavier in the context of controlling the need of taking up contentions to legally avoid the liabilities of the insurance company.

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83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with Sub-section (1) thereof. The right to avoid liability in terms of Sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first

instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

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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.

106. It is well-settled rule of law and should not ordinarily be deviated from. (See The Bengal Immunity Company Limited Vs. The State of Bihar and Others, The Keshav Mills Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, , Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, Belgaum Gardeners Cooperative Production Supply and Sale Society Ltd. v. State of Karanataka, 1993 Supp (1) SCC 96 (1), Hanumantappa Krishnappa Mantur and Ors. v. State of Karnataka, 1992 Supp. (2) SCC 213.

107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.

6. This Court on the basis of the judgment referred to above held that once the owner and driver are required to produce the driving licence and if they fail to produce the same, the onus of proving breach of policy would be deemed to be discharged. Onus would then shift on the owner to establish that he was not guilty of breach of the terms of policy. In the absence of any evidence being produced by the Insured, it will be presumed that he was guilty of a willful breach. The Insurer in such cases, would be entitled to recover the compensation

paid to the third party in discharge of its statutory liability.

7. Thus, the liability of the Insurance Company to satisfy the award in the first instance was statutory. The Appellant was only entitled to the recovery rights which have been duly granted by the impugned order.

8. The Appeal is without any merit; the same is accordingly dismissed. Pending applications also stands disposed of.