(2012) 07 DEL CK 0296

In the Delhi High Court

Case No : MAC. APP. 742 of 2012

New India Assurance Company Ltd. — APPELLANT

Vs

Rambir and Others — RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

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

Citation : (2012) 07 DEL CK 0296

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

Bench : Single Bench

Advocate : M.N. Singh, for the Appellant;

Judgement

G.P. Mittal, J.

CM APPL.11979/2012 (Exemption)

Exemption allowed, subject to all just exceptions. The Application is allowed.

MAC.APP. 742/2012

1. The Appellant New India Assurance Company Limited takes exception to a judgment dated 13.03.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 3,43,414/- in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 03.04.2007, it declined to exonerate the Appellant of its liability in spite of the fact that it has successfully proved the breach of the terms of policy. Learned counsel for the Appellant Insurance Company urges that question whether the Insurance Company has any liability at all to pay the compensation and later on recover it from the owner of the vehicle has been referred to a larger Bench in the case of National Insurance Co. Ltd. Vs. Parvathneni and Another, and therefore, the Insurance Company could not have been made liable to pay the compensation.

2. There are three Judge Bench decision of the Supreme Court in Sohan Lal Passi

Vs. P. Sesh Reddy and others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, , which have held that even where a conscious or willful breach as provided u/s 149 (2) (a) (ii) of the Motor Vehicles Act, 1988 (the Act) is proved, the Insurance Company would still remain liable to the innocent third party but may recover the compensation paid from the insured.

3. The three Judges Bench decision of the Supreme Court in Swaran Singh (supra) emphasized that the liability of the insurer to satisfy the decree passed in favour of the third party was its statutory. It approved the decision in 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, Paras 73, 104 and 105 of the report in Swaran Singh (supra) 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 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. Thus, the Appellant was only entitled to recovery rights which have been duly granted.

5. The Appeal is devoid of any merit; it is accordingly dismissed.

6. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.

