(2012) 05 DEL CK 0623

In the Delhi High Court

Case No : MAC. APP. No. 921 of 2011

New India Insurance Co. Ltd. APPELLANT

Vs

Vinay Kumar Saini and Others RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 149(2)

Citation : (2012) 05 DEL CK 0623

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

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant; Raj Singh, Advocate for the Respondents No. 1 and 2. and Mr. Vivek Sirohi, Advocate for the Respondents No. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appellant impugns a judgment dated 27.07.2011 whereby while awarding a compensation of Rs. 6,61,660/- in favour of the Respondents No. 1 and 2, the Appellant was made liable to pay the compensation in spite of the fact that it was proved that the owner did not possess a valid permit for plying the offending vehicle i.e. truck No. HR-38M-0275 in the State of NCT of Delhi. There is no Appeal by the Claimants or the owner of the offending vehicle involved in the accident.

2. The learned counsel for the Appellant argues that once the Appellant proved conscious breach of the terms of the policy, the Appellant Insurance Company had no liability at all. The learned counsel for the Appellant relies on Deddappa & Ors. v. National Insurance Co. Ltd., 1 (2008) ACC 1 (SC) and M.V. Jayadevappa and Another Vs. Oriental Fire and General Insurance Company Ltd. and Others, . The judgments cited by the learned counsel for the Appellant are not applicable to the facts of the present case as these are not on violation of the terms of the policy. Deddappa & Ors.(supra) refers to the cancellation of the contract of insurance in accordance with the provisions of Section 147 of the Motor Vehicles

Act, 1988. Similarly, M.V. Jayadevappa & Another(supra) refers to the payment of compensation in case where the victim or the deceased is a gratuitous passenger who is not covered by the statutory insurance policy u/s 147 of the Act.

3. 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.

4. There is an authoritative pronouncement of the Supreme Court on this issue in National Insurance Co. Ltd. Vs. Swaran Singh and Others, 104 and 105 of which 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."

5. 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.

6. 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 satisfy the liability towards the third party and recover the same from the owner.

7. Even if it is assumed that there was a conscious breach of the terms of the policy by not obtaining a required permit to ply the vehicle, the Appellant Insurance Company was under obligation to satisfy the award.

8. The Appeal is devoid of any merit; the same is accordingly dismissed. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance

Company.

