**(2012) 05 DEL CK 0625**

**In the Delhi High Court**

**Case No :** Mac. App. 175 of 2010

Oriental Insurance Co. Ltd. APPELLANT

Vs

Shashi Bala and Others RESPONDENT

**Date of Decision :** 08-05-2012

**Acts Referred:**

**Citation :** (2012) 05 DEL CK 0625

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

**Bench :** Single Bench

**Advocate :** L.K. Tyagi, for the Appellant; J.S. Kanwar, Advocate with Mr. Mohinder Malhotra, Advocate for R-1. Mr. Sandeep Sharma, Advocate for R-4, for the Respondent

**Final Decision :** Allowed

# Judgement

G.P. Mittal, J.

CM APPL.5275/2012 (Delay)

There is a delay of 7 days in filing the Appeal. For the reasons stated in the application, the same is allowed. Delay of seven days in filing the Appeal is condoned. The application stands disposed of.

MAC.APP. 175/2010

1. There is twin challenge to an award dated 30.11.2009 whereby a compensation of Rs. 9,50,000/- was awarded in favour of Smt. Shashi Bala and Smt. Prakash Devi who were the Petitioner and Respondent No. 4 before the Motor Accident Claims Tribunal (the Claims Tribunal). Firstly, it is urged that the compensation of Rs. 1,00,000/- awarded towards loss of love and affection is on the higher side. Secondly, it is contended that it was proved before the Claims Tribunal that Respondent No. 2 driver Gajjan Khan (Respondent No. 1 before the Claims Tribunal) did not possess a valid driving licence on the date of the accident to drive the offending vehicle, yet the Claims Tribunal instead of

 

exonerating the Appellant Insurance Company, made it liable to pay the compensation.

2. The Claims Tribunal granted recovery rights and that too only against the registered owner Mohd. Ali, Respondent No. 3. It is argued that the Appellant was entitled to recovery rights against Respondents No. 5 to 10, who were the legal representatives of deceased Irfan; the rightful owner and the person who was in possession of the vehicle at the time of the accident.

3. It is urged by the learned counsel for the Respondents No. 1 and 4 (the Claimants) that the compensation of Rs. 1,00,000/- awarded towards loss of love and affection cannot be said to be on the higher side, particularly when he was survived by a young widow and an old mother.

4. There is no Appeal by the driver and the registered owner. The legal representatives of the deceased Irfan (Respondents No. 5 to 10) preferred not to contest this Appeal despite their appearance through an Advocate.

5. The Claims Tribunal awarded a sum of Rs. 1,00,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only.

6. As far as the liability of the Insurance Company to pay the compensation when the driver is found to be in possession of a fake licence or an invalid licence or no licence, this Court in MAC APP.329/2010 titled ''Oriental Insurance Co. Ltd. v. Rakesh Kumar & Ors.'' decided on 29.02.2012, noticed the judgments of the Supreme Court 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, and relied on Sohan Lal Passi Vs. P. Sesh Reddy and others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, and opined that even in case of conscious breach of the terms of policy, the Insurance Company would have statutory liability to satisfy the award but would be entitled to recovery rights against the tortfeasor. Therefore, the Claims Tribunal''s finding making the Appellant Insurance Company liable to satisfy the award cannot be faulted.

7. It is important to note that Respondent No. 3 Mohd. Ali was the registered

 

owner. The LRs of deceased Irfan, who was the rightful owner, admitted during the inquiry before the Claims Tribunal that earlier Irfan was the rightful owner and in possession of the vehicle at the time of the accident. Therefore, the Appellant Insurance Company shall be entitled to recovery rights against the rightful owner on the date of the accident as well. Obviously, Irfan being dead, the right of recovery would only be against the estate of Irfan. Respondent No. 2 Gajjan Khan, the driver of the offending vehicle No. DL-1RG-9966 who caused the accident on account of his rash and negligent driving being the principal tortfeasor would also be liable to reimburse the amount of compensation to the Appellant Insurance Company.

8. In the result, the overall compensation is reduced from Rs. 9,50,000/- to Rs. 8,75,000/- which shall carry interest @ 7.5% per annum as granted by the Claims Tribunal.

9. The amount of Rs. 8,75,000/- along with proportionate interest shall be released to Respondents No. 1 and 4 (the Claimants) in the manner and in terms of the award dated 30.11.2009 passed by the Claims Tribunal.

10. The excess amount of Rs. 75,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

11. The statutory amount of Rs. 25,000/- be refunded to the Appellant Insurance Company.

12. The Appeal is allowed in above terms. Pending application stands disposed of.

 