
(2012) 07 DEL CK 0127
In the Delhi High Court
Case No : Mac. App. 565 of 2012

Reliance General Insurance Company Ltd.	APPELLANT
Vs	
Madhu and Others	RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

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

Citation : (2012) 07 DEL CK 0127

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

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant;

Judgement

G.P. Mittal, J.—The Appellant Reliance General Insurance Company Ltd. takes exception to a judgment dated 13.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 6,73,963/- was awarded for the death of Ratan Singh who died in a motor vehicle accident which occurred on 25.07.2007. The finding on negligence is not disputed by the driver, the owner and the Insurer; thus the same has attained finality.

2. During inquiry before the Claims Tribunal, it was claimed that the deceased was a partner of R.S. Enterprises. In the absence of any evidence as to the deceased's partnership in R.S. Enterprises or any income of the firm, the Claims Tribunal took the average Minimum Wages for unskilled and semi-skilled person as Rs. 3553/-; added 35% towards inflation; deducted one-third towards the personal and living expenses to compute the loss of dependency as Rs. 6,13,962/-.

3. The Claims Tribunal found that the driver was found to be driving the offending vehicle that is a TSR without a valid driving licence and thus while holding the Insurance Company liable to satisfy its statutory liability, granted it the right to recover the compensation from the owner.

4. There is twin challenge to the impugned judgment.

(i) First, in the absence of any evidence with regard to the bright future prospects, the Claims Tribunal was not justified in making addition of 35% in the assumed income.

(ii) Second, as conscious and willful breach of the terms of policy was established, the Insurance Company instead of making it liable to satisfy the award, in the first instance, ought to have been completely exonerated it.

5. This Court in Rakhi v. Satish Kumar & Ors. (MAC. APP. 390/2011) decided on 16.07.2012 referred to the reports of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi Vs. National Insurance Company Ltd. and Others, and held that Santosh Devi provided for an increase of 30% in the victims income towards inflation in case of self employed and persons having fixed income. Relevant portion of Santosh Devi is extracted hereunder:

14.....In our view, it will be naive to say that the wages or total emoluments/ income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/ emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/ income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural

for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

6. Thus, addition of 30% was permissible on the ratio of Santosh Devi. The Claims Tribunal on the other hand made addition of 35%.

7. The loss of dependency on addition of 30% comes to 5,91,219/-(3553/- + $30\% \times \frac{2}{3} \times 12 \times 16$) as against award of Rs. 6,13,962/-.

8. Thus, it cannot be said that the compensation awarded is exorbitant or excessive. No interference is called for on this ground.

9. As far as liability of Insurance Company to satisfy the award in the first instance is concerned, it is well settled that even in case of conscious and willful breach of terms of policy, the Insurer has statutory liability to pay compensation to the party and will have a right to recover the same from the Insured/tortfeasor either in the same proceedings or by independent proceedings as the case may be, or as may be ordered by the Claims Tribunal or the Court. The question of statutory liability to pay the compensation was discussed in detail by a two Judge Bench of the Supreme Court in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, where it was held that exclusion clause in the contract of Insurance must be read down being in conflict with the main statutory provision enacted for protection of victim of accidents. It was laid down that the victim would be entitled to recover the compensation from the insurer irrespective of the breach of the condition of policy. The three Judge Bench of the Supreme Court in Sohan Lal Passi Vs. P. Sesh Reddy and others, analyzed the corresponding provision under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in Skandia. In New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , the Supreme Court referred to the decision of the two Judge Bench in Skandia, the three Judge Bench decision in Sohan Lal Passi and held that the insurer who has been made liable to pay the compensation to third parties on account of certificate of insurance issued, shall be entitled to recover the same if there was any breach of the policy condition on account of the vehicle being driven without a valid driving licence. The relevant portion of the report is extracted hereunder:

21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but

for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

23. It is advantageous to refer to a two-Judge Bench of this Court in *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravan and Others*, . Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judge pointed out that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become suffers on account of accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the *raison d'être* for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance.

24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, .

25. The position can be summed up thus:

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence

10. Again in *United India Insurance Company Ltd. Vs. Leheru and Others*, , in para 18 of the report the Supreme Court referred to the decision in *Skandia*, *Sohan Lal Passi* and *Kamla* and held that even where it is proved that there was a

conscious or willful breach as provided u/s 149(2)(a) (ii) of the Motor Vehicle Act, the Insurance Company would still remain liable to the innocent third party but may recover the compensation paid from the insured. The relevant portion of the report is extracted hereunder:

18. Now let us consider Section 149(2) . Reliance has been placed on Section 149(2)(a)(ii) . As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia and Sohan Lal Passi cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance

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20. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view.

11. The three Judge Bench of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, again emphasized that the liability of the insurer to satisfy the decree passed in favour of the third party was statutory. It approved the decision in Sohan Lal Passi, Kamla and Lehru. Para 73 and 105 of the report 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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105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

12. This Court in MAC APP. No. 329/2010 Oriental Insurance Company Limited v. Rakesh Kumar and Others and other Appeals decided by a common judgment dated 29.02.2012, noticed some divergence of opinion in 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, and Premkumari and Others Vs. Prahlad Dev and Others,

and held that in view of the three Judge Bench decision in Sohan Lal Passi(supra) and Swaran Singh(supra), the liability of the Insurance Company vis-?-vis the third party is statutory. If the Insurance Company successfully proves the conscious breach of the terms of the policy, then it would be entitled to recovery rights against the owner or driver, as the case may be.

13. Thus, the Claims Tribunal judgment making the Appellant liable to pay the compensation in the first instance with a right to recover the same against the owner, cannot be faulted.

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

15. The compensation awarded shall be released in favour of the Claimants in terms of the order passed by the Claims Tribunal.

16. Statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.