
(2012) 05 DEL CK 0265
In the Delhi High Court
Case No : MAC APP 517 of 2007

Shashi Bhushan and Others

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 31-05-2012

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 14, 2
Motor Vehicles Act, 1988 — Section 149(2), 166, 170, 2(21)
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2012) 05 DEL CK 0265

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

Bench : Single Bench

Advocate : G.C. Mishra in MAC app. 517/2007 and None in MAC app. 897/2011, for the Appellant; Rohit Arora with Ms. Neelam Singh, Advocates for Respondent No. 1 Insurance Company in MAC App. 517/2007 and in MAC App. 897/2011, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellants impugn a judgment dated 17.05.2007 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby while awarding a compensation of Rs. 2,52,000/- in favour of the Respondents No. 2 and 3, the Respondent No. 1(National Insurance Co. Ltd.) was exonerated of the liability to pay the compensation on the ground that there was a willful and conscious breach of the terms of the policy. The Appellants being owner of the offending vehicle (the insured) and the driver of the offending vehicle challenge the judgment on the ground that the negligence on the part of the Second Appellant was not established; the compensation awarded is excessive and that the Second Appellant had applied for the grant of a transport licence before the date of the accident; thus the First Appellant was not guilty of willful breach of the terms of the policy and the Respondent No. 1 Insurance Company was not entitled to be exonerated.

2. The Cross-Objections (registered as MAC. APP. No. 897/2011) have been

preferred by the Respondents No. 2 and 3 on the ground that the compensation awarded is very low.

NEGLIGENCE:

3. On the issue of negligence, the Claims Tribunal held as under:

6. To prove this issue petitioners examined Sh. Sultan Singh as PW1 who deposed that on 21.4.05 at about 5 p.m. he was standing at the road side, Pandav Nagar, Near Mother Dairy. A girl aged 6 years was trying to cross the road. Tempo No. 5462 having Haryana number came from Laxmi Nagar side being driven in a rash and negligent manner and hit against the girl named Soni. Police took the girl to GTB Hospital where in the evening she succumbed to the injuries. R3 cross-examined this witness after seeking permission u/s 170 of the M.V. Act. During cross PW2 denied the suggestion that he was not present at the spot and he is deposing false. Petitioners has also relied upon certified copy of the chargesheet Ex. P-16 against R1 u/s 279/304-A IPC for this accident showing involvement of the offending vehicle. Ex. P-7 is the P/M report of Soni D/o Rajender, aged 6 years, wherein cause of death is opined as crush injuries to abdomen and pelvis produced by blunt force impact. The chargesheet and P/M report supports statement of PW2.

7. The Ld. counsel for the R3 has contended that the statement of PW1 and PW2 are in contradiction to the record. The Ld. counsel pointed out that as per PW2 deceased was taken to GTB Hospital whereas postmortem was done at LBS Hospital. To this extent I agree with the Ld. counsel for R3 that there is contradiction regarding the name of the hospital in the statement of PW2 vis-?-vis record. Merely on this ground testimony of this witness cannot be disbelieved. Moreover, respondents failed to lead any evidence in rebuttal.

4. The Second Appellant did not enter the witness box to rebut PW1's testimony. Moreover, his testimony is corroborated by registration of a criminal case being FIR No. 213, P.S. Pandav Nagar. In a Claim Petition u/s 166 of the Motor Vehicles Act, 1988(the Act), negligence is required to be proved on the touchstone of preponderance of probability, which to my mind has been done in the instant case. The finding on negligence reached by the Claims Tribunal, therefore, cannot be faulted.

QUANTUM OF COMPENSATION:

5. It is urged by the learned counsel for the Appellants that the quantum of compensation is exorbitant and excessive. On the other hand, the learned counsel for the Respondents No. 2 and 3 relied on the judgment of this Court in R.K. Malik and Others Vs. Kiran Pal and Others, judgment of the Supreme Court in R.K. Malik and Another Vs. Kiran Pal and Others, and judgment of this Court in National Insurance Co. Ltd. Vs. Farzana and Others, . In Farzana (supra), this court relied on the judgment of the Supreme Court in Manju Devi v. Musafir Paswan, VII (2005) SLT 257, Shyam Narayan Vs. Kitty Tours Travels and Others,

and both the judgments of R.K. Malik (supra) and held that in case of the death of a school going child, the parents would be entitled to a compensation of Rs. 3,75,000/- (Rs. 2,25,000/- towards loss of dependency, Rs. 75,000/- towards non-pecuniary damages and Rs. 75,000/- towards future prospects). In the circumstances, the compensation of Rs. 2,52,000/- is liable to be enhanced to Rs. 3,75,000/- .

6. Considering that the accident took place in the year 2007, the grant of interest at the rate of 7% per annum seems to be reasonable and does not call for any interference.

LIABILITY:

7. It is admitted case of the Appellants that the accident was caused by a Tata Tempo No. HR-63-5462 and its gross weight was 5700 Kg. Since it was a goods vehicle, it was a light motor vehicle as also a transport vehicle. The Appellant No. 2 possessed a driving licence to drive LMV(non-transport) for the period 17.09.2002 to 04.07.2008. The endorsement to drive a transport vehicle was made only w.e.f. 05.07.2005 to 04.07.2008. The accident took place on 21.04.2005. It is, therefore, evident that the Second Appellant did not possess a licence to drive a transport vehicle on the date of the accident.

8. In National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, His Lordship Mr. Justice S.B. Sinha (as he then was) drew a distinction between the validity of a licence for LMV, to drive a light goods carriage or a light passenger vehicle before amendment in form 4 prescribed under Rule 2 (e) in the Central Motor Vehicles Rules, 1989 (the Rules). Before the amendment in 2001 the entries Medium Goods Vehicle and Heavy Goods Vehicle existed which have been substituted by a "transport vehicle". It was held that a person holding a licence for Light Motor Vehicle after 28.03.2001 would not be competent to drive a "transport vehicle". In the aforesaid case, the accident occurred on 09.12.1999. It was in that context that it was held that the driver by holding a valid licence for LMV was authorized to drive a Light Goods Vehicle as well. In this case, the accident took place on 21.04.2005 and thus the driver who was holding a driving licence to drive a Light Motor Vehicle was not competent to drive a transport vehicle. Paras 12 to 17 of the report are extracted hereunder:-

12. The Central Government has framed Rules known as The Central Motor Vehicles Rules, 1989.

13. The word "Form" has been defined in Rule 2(e) to mean a Form appended to the rules.

I Apply for a licence to enable me to drive vehicles of the following description:

(d) Light motor vehicle

(e) Medium goods vehicle

(g) Heavy goods vehicle

(j) Motor vehicles of the following description:....

After amendment the relevant portion of Form 4 reads as under:

I Apply for a licence to enable me to drive vehicles of the following description:

(d) Light motor vehicle

(e) Transport vehicle

(j) Motor vehicles of the following description:....

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles. Clause (e) provides for "Transport vehicle" which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries "medium good vehicle" and "heavy goods vehicle" existed which have been substituted by "transport vehicle". As noticed hereinbefore, "Light Motor Vehicles" also found place therein.

15. "Light Motor Vehicle" is defined in Section 2(21) and, therefore, in view of the provision, as then existed, it included a light transport vehicle. Form 6 provides for the manner in which the licence is to be granted, the relevant portion whereof read as under:

Authorisation to drive transport vehicle

Number.... Date....

Authorised to drive transport vehicle with effect from.... Badge number....

Signature....

Designation of the licensing authority Name and designation of their authority who conducted the driving test.

16. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time, to cover both, "light passenger carriage vehicle" and "light goods carriage vehicle".

A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.

17. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law.

9. In *National Insurance Co. Ltd. Vs. Kusum Rai and Others*, a driver holding a driving licence to drive a Light Motor Vehicle was held to be not entitled to drive a taxi.

10. Subsequently, in *New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha*

Fakir and Another, the Supreme Court differentiated between a transport vehicle and non transport vehicle and held that a driver who had a valid licence to drive a Light Motor Vehicle was not authorized to drive a light goods vehicle. It was further held that the person must possess the licence for the class of vehicle involved in the accident.

11. The First Appellant being the owner and insured has not come forward with an explanation as to the circumstances under which the vehicle was entrusted to the Second Appellant who did not possess a licence to drive a transport vehicle. Thus, the First Appellant was guilty of willful violation of the terms of the policy.

12. The Claims Tribunal therefore exonerated the Respondent Insurance Company from its liability to pay the compensation on the basis of a judgment of the Supreme Court in National Insurance Co. Ltd. Vs. Kusum Rai and Others,

13. 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 an 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 (supra). 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(supra), the three Judge Bench decision in Sohan Lal Passi (supra) 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 Chandravadan 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....

14. Again in *United India Insurance Company Ltd. Vs. Lehu and Others*, , in para 18 of the report the Supreme Court referred to the decision in *Skandia(supra)*, *Sohan Lal Passi (supra)* and *Kamla (supra)* 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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xxx 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.

15. 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 (supra), Kamla (supra) and Lehu (supra). 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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xxx 105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

16. 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 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, and Premkumari and Others Vs. Prahlad Dev and Others, on the one hand and 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. Lehu 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, ; on the other hand 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, it would be entitled to recovery rights against the owner or driver, as the case may be.

17. In this view of the matter, the First Respondent Insurance Company is under an obligation to discharge its statutory liability to pay the compensation awarded

along with interest to the Respondents No. 2 and 3. It shall be entitled to recover the compensation without taking separate proceedings in execution of this very judgment from the First Appellant (being the owner and insured of the offending vehicle) and the Second Appellant (being the principal tortfeasor).

18. The amount awarded(as per para 6 above) shall be equally apportioned in favour of the Respondents No. 2 and 3. This accident took place in the year 2005. The amount of compensation shall be deposited by the Respondent No. 1 National Insurance Co. Ltd. with the UCO Bank, Delhi High Court Branch in the name of the Respondents No. 2 and 3 within six weeks.

19. Both the Appeals are allowed in above terms. The statutory amount of Rs. 25,000/- shall be refunded to the Appellants in MAC. APP. No. 517/2007.