(2012) 05 DEL CK 0285

In the Delhi High Court

Case No : MAC. APP. No. 497 of 2012

Shriram General Insurance Co.	APPELLANT
Vs	
Mahender Kumar Girdhar and Others	RESPONDENT

Date of Decision : 07-05-2012

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

Citation : (2012) 05 DEL CK 0285

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

Bench : Single Bench

Advocate : Naveen Kumar Chauhan, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appellant Shriram General Insurance Co. impugns a judgment dated 12.01.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 9,84,300/-, the Claims Tribunal directed the Appellant to satisfy the award with a right to recover the same from the Respondents No. 2 and 3 (the owner and the driver of the offending vehicle) on the ground that there was a breach of the terms of the policy as the Respondent No. 2 Aslam (the driver) did not possess a valid driving licence to drive the vehicle. On the other hand, it was established that the driving licence possessed by the driver was fake. 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.

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

3. 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.

4. 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 indemnify the liability towards the third party and recover the same from the owner.

5. The Appellant Insurance Company has already been granted recovery rights against the Respondents No. 1 and 2.

6. It was urged that the interest on the award amount granted @ 7.5% was excessive and exorbitant. The contention raised is totally misconceived. Normally, the Claims Tribunal and the Courts in Motor Accident Claims cases grant interest as per the bank rate of interest prevalent at the time on long-term fixed deposits. This accident took place in the year 2009 and the Claim Petition came to be decided in the year 2012. During this period, the rate of interest for long-term deposits were in the vicinity of 8 to 9% per annum. Thus, the Claims Tribunal was very conservative in granting the interest @ 7.5% per annum.

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

8. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. The applications pending, if any, are accordingly disposed of.

