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(2013) 02 AHC CK 0280

In the Allahabad High Court

Case No : F.A.F.O. No''s. 662 and 664 to 666 of 2002

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Poonam Misra and Others RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149(2)(a)(i)(ii), 149(2)(a)(ii), 173

Citation : (2013) 2 AWC 1844

Hon'ble Judges : Rajiv Sharma, J;Devendra Kumar Upadhyaya, J

Bench : Division Bench

Advocate : R.C. Sharma, for the Appellant;

Final Decision : Partly Allowed

Judgement

Rajiv Sharma and Devendra Kumar Upadhyaya, JJ.—Case called out. Neither learned counsel for the respondents is present nor there is any request for passing over or adjournment of the case.

2. Since common questions of law and facts are involved in the bunch of appeals, as such, they are being decided by a common order.

3. Heard Sri R.C. Sharma, learned counsel for the appellant and perused the records.

4. Since these first appeal from orders have been filed u/s 173 of the Motor Vehicles Act by the United India Insurance Co. Ltd. against the award dated 29.8.2002 passed by the Motor Accident Claims Tribunal/A.D.J., Court No. 1, Lakhimpur Kheri, in M.A.C.P. Nos. 116 of 1997, 117 of 1997, 115 of 1997 and 114 of 1997, respectively.

5. The only ground raised by the learned counsel for the appellant is that since the appellant successfully proved the breach of the terms of policy, it was entitled to be exonerated of its liability to pay the compensation and the appellant should not have been made liable to pay the compensation in the first

instance and then to recover the same from the owner and the driver.

6. We are not inclined to agree with the above submission of learned counsel for the appellant. The issue of satisfying the third party liability even in case of breach of the terms of insurance policy is settled by the Apex Court in Sohan Lal Passi Vs. P. Sesh Reddy and others, .

7. As per Section 149(2) of the Motor Vehicles Act (the Act), an insurer is entitled to defend the action on the grounds as mentioned u/s 149(2)(a)(i)(ii) of the Act. Thus, the onus is on the insurer to prove that there is breach of the condition of the policy. It is well-settled that the breach must be conscious and wilful. Even if a conscious breach on the part of the insured is established, still the insurer has a statutory liability to pay the compensation to the third party and will simply have the right to recover the same from the insured either in the same proceedings or by independent proceedings as the case may be, as ordered by the Claims Tribunal or the Court.

8. The question of statutory liability to pay the compensation was discussed in detail by 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 Supreme Court in Sohan Lal Passi analyzed the corresponding provisions under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in Skandia.

9. In New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , the Apex Court has held that the insurer who has been made liable to pay the compensation to third parties on account of issuance of certificate of insurance, 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

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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 sufferer 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''etre 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. Lehru 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 wilful breach as provided u/s 149(2)(a)(ii) of the Motor Vehicles 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

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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 notice 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 Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, : 2006 (1) ACCD 240 : 2004 (2) AWC 1589 (SC), 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, Paras 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. In view of the above legal proposition of law, we are of the view that the liability of the insurance company to satisfy the award in the first instance is statutory. It is bound to satisfy the same and entitled to recover the amount of compensation paid from the driver and the owner.

13. Accordingly, we modify the impugned award to the extent that appellant shall pay the entire compensation under award to the claimants within a period of three months from the date of receipt of the certified copy of this order. However, liberty is granted to appellant to recover the amount from the owner of the vehicle in accordance with law.

14. All these appeals are partly allowed. Registry is directed to transmit the amount deposited by the appellant forthwith and the Tribunal, on receipt of the amount, shall pay the same to the claimants subject to its verification.

Registry shall remit the lower court record forthwith.

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