

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd May, 2012

+ **MAC.APP. 89/2008**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr.D.K.Sharma, Advocate

versus

MHOD.LIAQ & ORS. Respondents
Through: Mr.Ram N.Sharma, Advocate

+ **MAC.APP. 517/2012**

MOHD LIAQ & ORS Appellants
Through: Mr.Ram N.Sharma, Advocate

versus

NEW INDIA ASSURANCE CO LTD Respondent
Through: Mr.D.K.Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Cross Appeals arise out of a judgment dated 06.11.2007 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹2,75,000/- was awarded for the death of a school going student Mohd. Danish aged 10 years at the time of the accident. On appreciation of

evidence the Claims Tribunal found that the accident was caused because of the rash and negligent driving of tanker bearing No. UP 13 D 5376 driven by Respondent No.3 (Amit Kumar). The tanker was owned by Respondent No.4 Smt. Mumtaz Inayat. Relying on the judgment of *Syam Narayan v. Kitty Tours & Travels* 4 2005 SCC 1, the Claims Tribunal awarded a compensation of ₹2,75,000/-.

2. It is urged by the learned counsel for the Appellant that during inquiry before the Claims Tribunal it was established that the tanker was being driven by Respondent No.3 without holding a valid licence for the same. It was also established that the Respondent No.4 did not possess a valid permit for the tanker. The Claims Tribunal erred in holding that the owner possessed a valid permit and, therefore, declined recovery rights to the Appellant.
3. In the cross objections registered as MAC APP. 517/2012 the plea raised by Respondents No. 1 and 2 is that the compensation towards future prospects and towards loss of love and affection should have been awarded @ ₹75,000/- each on the basis of the judgment of the Supreme Court in *R.K.Malik v. Kiran Pal* 2009(8) Scale 451 and the judgment of this Court in *National Insurance Company Limited v. Farzana & Ors.* 2000 ACJ 2763.
4. The learned counsel for the Appellant has taken me through para 25 of the impugned judgment where the Claims Tribunal

observed that R3W1 Anil Kumar Junior Clerk RTO Ghaziabad deposed that a permit was issued in respect of tanker No.UP 13 D-5376 valid for the period of 14.02.2006 up to 07.07.2006. Thereafter the Claims Tribunal stated that '*thus the permit was valid upto 13.02.2006*' (that is the date of the accident).

5. I have perused the testimony of R3W1. The witness has categorically stated that on the date of the accident i.e. 13.02.2006 the vehicle did not have any permit issued from their Authority. As stated earlier the permit was issued on 14.02.2006 and was valid upto 07.07.2006. A notice under order XII Rule 8 CPC Ex. R3W3/2 was issued to the owner to produce the permit to ply the vehicle. Admittedly the notice remained unserved. Although Respondents No. 3 and 4 filed the written statement but they preferred not to produce the permit.
6. The position is same with regard to the driving licence held by the Respondent No.3. In this regard R3W2 Naresh Kumar Tripathi deposed that Anil Kumar possessed a licence to drive a light motor vehicle and motorcycle for the period 02.07.2001 to 01.07.2021. An endorsement to drive a heavy vehicle was made for the period 27.11.2002 to 26.11.2005. The witness deposed that Amit Kumar (Respondent No.3) did not get the driving licence renewed from the authority for heavy vehicles. In cross-examination this witness deposed that even if a licence is renewed from any other authority intimation is normally sent

to the authority wherefrom a driving licence is issued. He stated that their Authority did not get any intimation for renewal of the licence from any other Authority. As stated above, notice under Order XII Rule 8 CPC Ex. R3W3/2 was issued to Respondent No.3 and 4 (driver and the owner of the offending vehicle) to produce the driving licence of the driver valid as on the date of the accident. They failed to produce the driving licence. In the absence of production of any driving licence by Respondents No. 3 and 4 and on the basis of R3W2's testimony it is established that the driving licence to drive a heavy motor vehicle was valid only upto 26.11.2005. The licence was valid only to drive light motor vehicle and a motorcycle as on the date of the accident i.e. 13.02.2006.

7. As per Section 149(2) of the Motor Vehicles Act, 1988 (the Act) an insurer is entitled to defend the action on the ground as mentioned in Section 149(2)(a)(i) and (ii) of the Act by proving that there has been a breach of a specified condition of the policy excluding the use of vehicle for a purpose not allowed by the permit or for a condition excluding driving by a person or persons not possessing a valid driving licence on the date of the accident.
8. It is well settled that breach of the condition of the policy on the part of the insurer must be conscious and willful. The conscious breach having been established, the Appellant is entitled to recover the compensation paid to the claimants from

driver and owner of the offending vehicle i.e. Respondents No. 3 and 4 herein on the basis of Supreme Court Judgments of this Court in *Skandia Insurance Company Limited v. Kokilaben Chandravadan*, (1987) 2 SCC 654 and *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21, *United India Insurance Company Ltd. v. Lehru & Ors.*, (2003) 3 SCC 338 and the judgment of this Court in *Oriental Insurance Company Limited v. Rekha Ben and Ors.* MAC 613/2009 decided on 08.05.2012.

9. As far as cross objections are concerned the same is covered by the judgment of the Supreme Court in *R.K.Malik v. Kiran Pal* 2009(8) Scale 451 and the judgment of this Court in *National Insurance Company Limited v. Farzana & Ors.*, 2009 ACJ 2763. The Respondents No. 1 and 2 are entitled to a compensation of ₹2,25,000/- on account of loss of dependency and ₹75,000/- towards future prospects and ₹25,000/- towards non-pecuniary damages i.e. love and affection. Thus there is an enhancement of a sum of ₹1 lac in the compensation awarded which shall carry interest @ 7.5% per annum from the date of filing of the petition till the amount is deposited.
10. 25% of the enhanced amount shall be payable to Respondent No. 1 and 75% to the Respondent No.2. The enhanced compensation shall be deposited in the name of Respondents No. 1 and 2 with the Claims Tribunal within a period of six weeks.

11. As I have already held above, the Appellant/New India Assurance Company Limited shall be entitled to recover the amount from Respondents No. 3 and 4, the driver and the owner of the vehicle.
12. The Appellant/Insurance Company shall be entitled to the refund of the security amount of ₹25,000/- on proof of deposit of the enhanced compensation with the Claims Tribunal.
13. Both the Appeals are allowed in above terms.
14. No costs.

(G.P. MITTAL)
JUDGE

MAY 22, 2012
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