

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

Reserved on: 15th February, 2012
Pronounced on: 21st February, 2012

+ **MAC.APP. 466/2010**

ANITA A PATHAK Appellant
Through Ms. Shaline Rawat, Advocate

versus

RAJ BAHADUR & ORS. Respondents
Through Mr. Rajat Brar, Advocate Proxy
Counsel for Ms. Rameeza
Hakeem, Advocate for the
Respondent No.3

+ **MAC.APP. 451/2010**

HARJEET SINGH SACHAN Appellant
Through Ms. Shaline Rawat, Advocate

versus

RAJ BAHADUR & ORS. Respondents
Through Mr. Rajat Brar, Advocate Proxy
Counsel for Ms. Rameeza
Hakeem, Advocate for the
Respondent No.3

+ **MAC.APP. 459/2010**

VIJAY KUMAR Appellant
Through Ms. Shaline Rawat, Advocate

versus

RAJ BAHADUR & ORS. Respondents
Through Mr. Rajat Brar, Advocate Proxy
Counsel for Ms. Rameeza

Hakeem, Advocate for the
Respondent No.3

+ **MAC.APP. 454/2010**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through Mr. Rajat Brar, Advocate Proxy
Counsel for Ms. Rameeza
Hakeem, Advocate

versus

VIJAY KUMAR & ORS.

..... Respondents

Through Ms. Shalinee Rawat, Advocate
for the Respondent No.1

+ **MAC.APP. 455/2010**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through Mr. Rajat Brar, Advocate Proxy
Counsel for Ms. Rameeza
Hakeem, Advocate

versus

BIMLA YADAV & ORS

..... Respondents

Through Ms. Shalinee Rawat, Advocate
for the Respondents No.1 to 7

+ **MAC.APP. 456/2010**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through Mr. Rajat Brar, Advocate Proxy
Counsel for Ms. Rameeza
Hakeem, Advocate

versus

HARJIT SINGH & ORS.

..... Respondents

Through Ms. Shalinee Rawat, Advocate
for the Respondent No.1

+ **MAC.APP. 464/2010**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through Mr. Rajat Brar, Advocate Proxy
Counsel for Ms. Rameeza
Hakeem, Advocate

versus

ANITA PATHAK & ORS.

..... Respondents

Through Ms. Shaline Rawat, Advocate
for the Respondents No.1 to 3

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These are seven connected Appeals arising out of a judgment dated 09.03.2010 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby four Claim Petitions i.e. Suit No.515/2006, 517/2006, 523/2006 and 511/2006 were decided.
2. MAC APP.466/2010 has been filed by Smt. Anita A. Pathak for enhancement of compensation of ₹ 19,49,160/- granted for the death of Ashutosh Pathak in an accident which took place on 21.05.2003.
3. The ground urged by the Appellants is that the deceased was a young officer of 28 years working as Inspector in CBI. He had a bright future. It is contended that an amount of ₹ 4710/- was

deducted towards the income tax for the Assessment Year 2003-04 instead from the annual income which resulted in lower figure under the head of loss of dependency.

4. MAC APP.451/2010 filed by Harjeet Singh Sachan relates to the injuries suffered by the Appellant. The ground set up by him is that no compensation has been awarded towards the conveyance and the special diet. The compensation awarded towards the pain and suffering was on the lower side. Harjeet Singh Sachan seeks enhancement of the compensation of ₹ 1,04,250/- to ₹ 2,20,000/-.
5. MAC APP.459/2010 filed by Vijay Kumar relates to the injuries suffered by him. At the time of accident he was a Senior CBI Officer. The ground set up by him is that no compensation has been awarded towards the conveyance and the special diet. The compensation awarded towards the pain and suffering, loss of amenities and on account of permanent disability suffered by him is too meager. He seeks enhancement of compensation from ₹ 1,43,780/- to ₹ 5,20,000/-.
6. In MAC APP. 454/2010, 455/2010, 456/2010 and 464/2010, plea of the Appellant Bajaj Allianz General Insurance Company Limited is that vehicle involved in the accident i.e. Maruti Van No.UP-32U-7459 was being plied as a taxi. It was in violation of the terms of policy and Section 149 (2) (a) (i) (a) of the Motor Vehicles Act (the Act). Since the willful breach of the

terms of the policy was successfully established by the Insurance Company, the Claims Tribunal erred in directing the Insurance Company to satisfy the award in the first instance and then to recover the same from the owner of the vehicle. It is urged that the Insurer could not have been saddled with the liability to first pay the amount and then to recover the same.

7. For the sake of convenience, the Appellants in MAC APP. 466/2010, 451/2010 and 459/2010 shall be referred to as the Claimants (as they were before the Claims Tribunal) and M/s. Bajaj Allianz General Insurance Company Limited who has filed MAC APP. 454/2010, 455/2010, 456/2010 and 464/2010, shall be referred to as the Insurer.
8. The facts of the case can be culled out from the impugned judgment as under:-

“.... It is alleged that on that day the deceased Ashutosh Pathak who was Inspector in CBI and Sh. Attar Singh who was Constable in CBI alongwith Vijay Kuamr and Harjeet Singh Sachan were travelling together in connection with official duties and were coming from Lucknow to Delhi. It is alleged that car driver lost his balance and hit car with the tree. The impact proved fatal for Ashutosh Pathak and Attar Singh while other person namely Vijay Kumar and Harjeet Singh received injuries. The claim petition is filed by legal representatives of deceased person and injured person separately. The claim petitions are filed against driver, owner and insurer of offending vehicle no.UP-32U-7459.

The insurance of offending vehicle is admitted while respondent driver has not produced any reply or evidence to dispute the facts. However, respondent no.2/owner filed reply and stated that the car was borrowed by CBI personally from him and it was not used as taxi as alleged by the petition. In the petition, however, it is mentioned that respondent no.2/owner was operating a Tour and Travel services under the name and style of Unique Tour & Travel, Gomti Nagar, Lucknow, U.P. Insurance company has alleged violation of terms and conditions of insurance policy and stated that offending vehicle was private vehicle and it was being used as taxi for which they have examined a witness. Policy was placed on record as Ex.R3W1/2 by the Insurance company....”

9. On the basis of the pleadings of the parties, following issues were framed by the Claims Tribunal:-

“1. Whether Ashutosh Pathak & Attar Singh died due to fatal injuries suffered and Vijay Kumar & Harjeet Singh Sachan sustained injuries in the accident on 21.5.3 due to rash and negligent driving of vehicle no.UP-32U-7459 on the part of R-1 ?

2. To what amount of compensation are the petitioners entitled in these four consolidated petitions and from whom?

3. Relief.”

10. On the issue of negligence, the Claims Tribunal held that the averments made in the Petition and as stated by the witnesses that the vehicle lost control and hit against a tree and doctrine of *res ipsa loquitor* would be applicable. It was thus held that the

accident was caused on account of rash and negligent driving of the offending vehicle No.UP-32U-7459 by its driver. This finding is not disputed by the Insurer.

MAC APP.466/2010

11. It was proved on record that the deceased Ashutosh Pathak was working as an Inspector in CBI. It was established that he was a young boy of 28 years and had a bright future. His salary as ₹ 12,960/- was established by Salary Certificate Ex.PW-5/3. He was entitled to an increase of 50% in the salary by way of future prospects. The Claims Tribunal erred in deducting an amount of ₹ 4710/- as income tax from the deceased's monthly income.
12. On the basis of the salary slip, the deceased's annual income comes to ₹ 1,55,520/- (₹ 12,960/- x 12). There was a liability of income tax of ₹ 20,656/- on this amount in the relevant year. On adding 50% towards future prospects, the loss of dependency comes to ₹ 22,92,688/-. (1,55,520/- - 20,656/- +50% x 2/3 x 17).
13. The Tribunal awarded a sum of ₹ 10,000/- on account of loss of love and affection. This needs to be raised to ₹ 25,000/- on the basis of the judgment of the Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627.

14. No compensation was awarded towards the loss to Estate. I would award a compensation of ₹ 10,000/- under this head.
15. The overall compensation is tabulated as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	₹19,19,160/-	₹22,92,688/-
2.	Funeral Expenses	₹ 10,000/-	₹ 10,000/-
3.	Loss of Consortium	₹ 10,000/-	₹ 10,000/-
4.	Loss of Love & Affection	₹ 10,000/-	₹ 25,000/-
5.	Loss to Estate	--	₹ 10,000/-
	Total	₹ 19,49,160/-	₹ 23,47,688/-

16. The compensation is enhanced from ₹19,49,160/- to ₹ 23,47,688/-. The enhanced amount of ₹ 3,98,528/- shall carry interest @ 7.5% per annum from the date of filing of the petition till the date of payment.

MAC APP. No.451/2010

17. The Claimant Harjeet Singh Sachan suffered fracture of shaft femur – segmental type. He remained admitted in Balrampur Hospital, Lucknow from 21.05.2003 to 07.06.2003. A perusal of the discharge slip Ex. PW2/3-A reveals that DRIFC K Nail was done under spinal anesthesia on 27.05.2003. Stitches were

removed on 06.06.2003. The certificate shows that the claimant was medically advised not to move (at all) for three months. He was required to sit straight on a hard bed. The Tribunal awarded a compensation of ₹ 1,04,250/- in all i.e. ₹ 74,250/- towards loss of leave for six months, ₹ 20,000/- on account of pain and suffering and ₹ 10,000/- on account of future treatment for removal of nail.

18. The Claimant's grievance is that he has not been awarded any compensation towards conveyance and special diet. No specific evidence was led by the Claimant (Harjeet Singh) that he spent any amount on conveyance or special diet. Yet, considering the nature of injuries, the long period of his confinement to bed, duration of treatment as an indoor patient and as an outdoor patient, the Claimant was entitled to be awarded some Transport allowance for visiting the doctors and for taking special diet. I accordingly, award a sum of ₹ 5,000/- each under these two heads.
19. It is urged that the compensation towards pain and suffering is on the lower side. The Claims Tribunal in its discretion awarded a sum of ₹ 20,000/- which cannot be said to be low. I would, therefore, maintain the same.
20. The compensation is, therefore, enhanced by a sum of ₹ 10,000/- which shall carry interest at the rate of 7.5% per annum

from the date of the filing of the petition till the same is deposited in the Court.

MAC APP. No.459/2010

21. Claimant Vijay Kumar suffered compound fracture dislocation with intra-articular extension both bone left leg, left side Dylen Fracture and Fracture Dislocation Gallezi left side. The Claimant was removed to Balrampur Hospital, Lucknow, where he remained admitted from 21.05.2003 to 26.05.2003. He was shifted to Safdarjung Hospital, New Delhi, where he was operated upon by Dr.A.K.Singh, Director of the hospital. The Claimant then remained admitted in Charak Palika Hospital, Moti Bagh, New Delhi. In the clinical history, it is recorded that the Claimant was treated by external fixator and minimal external fixator with a screw. He was operated upon in the Charak Palika Hospital on 14.11.2006 under GA (general anesthesia) where debridement and sequestrectomy was done and the screws were removed. It is also mentioned in the clinical history that the patient (the Claimant) had discharge from a sinus along the wound scar. He was treated conservatively but had no relief. A permanent disability certificate Ex.PW1/10 was issued to the Claimant by the Director of Safdarjung Hospital on 25.07.2005, which is extracted hereunder:-

“Certified that SH.VIJAY KUMAR, aged-53 yrs., Male, S/O Sh. Charan Das, r/o C-315, Pragati Vihar Hostel, Lodhi Road, New

Delhi has been examined by me today. He is a case of Road Traffic Accident sustained on 21.05.2003. He had sustained Compound Fracture Dislocation with intra-articular extension both bone leg, left side- DYLEN FRACTURE and Fracture Dislocation Gallexzi lt. Side. He was operated and undergoing treatment. He has got pain and swelling with restriction of movement of left Ankle and deformity of left wrist.

He is a Orthopaedically Handicapped person amounting to 25% (Twenty Five Percent) permanent physical impairment with loss of physical function to whole body.

Sd./-

(Dr.A.K.Singh)

Director/Consultant

*CENTRAL INSTITUTE OF ORTHOPAEDICS
SAFDARJUNG HOSPITAL, NEW DELHI-29."*

22. The expenses on the entire treatment including three admissions in the hospital were borne by Vijay Kumar's (the Claimant's) employer i.e. CBI. He remained on leave for a period of six months on three different occasions for which a compensation of six months' salary i.e. ₹ 1,23,780/- was granted. In addition, a sum of ₹ 20,000/- was granted on account of pain and suffering.
23. Considering the nature of injuries and permanent disability to the extent of 25% the compensation awarded was extremely low.
24. Section 168 of the Act enjoins the Tribunal to make an award determining the amount of compensation which appears to be

just. However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression “which appears to just” vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons, affected nor should it be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determination to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

25. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors*, (1994) 2 SCC 176, the Supreme Court observed that the determination of the quantum must answer what contemporary society “would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing”. The amount awarded must not be niggardly since the law values life and

limb in a free society in generous scales. At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.

26. At the time of the accident, the Claimant was aged 51 years and was working as an Additional Superintendent of Police in CBI. The record reveals that he was subsequently promoted as Superintendent of Police. The contentions raised on behalf of the Claimant are:-

- (i) No compensation has been awarded on account of loss of amenities and pleasures of life.
- (ii) No compensation has been awarded towards special diet and conveyance.
- (iii) No compensation has been awarded on account of permanent disability.

27. The disability certificate Ex.PW1/10 shows that there is restriction of movement of left ankle and deformity of left wrist on account of multiple fractures suffered in these parts of the body. The Claimant would have difficulty in running, walking, boarding a bus and carrying on his day-to-day activities. In the

circumstances and considering the period of indoor and outdoor treatment the compensation for pain and suffering needs to be raised. The Claimant is also entitled to be compensated for loss of amenities and pleasure in life. I would award a compensation of ₹75,000/- towards loss of amenities in life and the compensation for pain and suffering is raised from ₹ 20,000/- to ₹ 50,000/-.

28. No evidence was led by the Claimant to prove the amount spent on the transport. He remained under treatment for almost three years. He was admitted in three hospitals for a duration of about 22 days. Considering the nature of injuries, the period of treatment, I award him a sum of ₹ 10,000/- each on account of the conveyance and special diet.
29. The Claimant Vijay claims a sum of ₹ 3,00,000/- on account of disability. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011(1) SCC 343, it was held that mere permanent disability is not sufficient to infer loss of earning capacity. It has to be proved by positive evidence that the permanent disability, in fact, affected the injured's earning capacity. In the instant case, the Claimant was working as an officer in CBI and he continued to work as such after the date of the accident. As stated earlier, he has already been compensated by the Claims Tribunal for the loss of leave. No evidence has been brought that his promotion was affected on account of the injuries suffered.

30. The date of birth of the Claimant was 13.01.1952. He was due to retire on 31.01.2012 on attaining the age of the superannuation. All retired police officer, do have prospects of getting gainful employment even after attaining the age of superannuation. No evidence was led by the Claimant as to how his earning capacity would have been affected. On his salary of ₹ 20,630/-, 25% loss of earning capacity on a multiplier of 9 (at the age of 60) would come to ₹ 5,57,010/-. Even if it is assumed that the loss of earning capacity was affected by 10%, though disability was 25% in relation to whole body, then it would come to ₹ 2,22,804/-. In the circumstances, I would award him a lump sum compensation of ₹ 2,25,000/- on account of loss of earning capacity. The overall compensation is enhanced by ₹ 3,40,000/-, which shall carry interest at the rate of 7.5% per annum from the date of the filing of the petition till the date of the deposit in the Court.

MAC APP. Nos.454/2010, 455/2010, 456/2010 and 464/2010

31. Now, is the time to turn to the four appeals preferred by the insurer disputing the liability to pay the compensation on account of breach of the terms of the policy. It is urged by the learned counsel for the insurer that the insurer had no liability to pay the compensation as the offending vehicle bearing registration No.UP-32U-7459 was being used for hire or reward in contravention of the terms of the policy as also Section 149

(2) (a) (i) (a) of the Motor Vehicles Act. On the question of liability, the Claims Tribunal held as under:-

“ Insurance Company has pleaded violation of terms and conditions of insurance policy. Petitioner examined witness PW1 Vijay Kumar who is one of the injured. He stated that in cross-examination he stated that payment of taxi bills was made from the office. Same is deposed by PW2 Harjeet Singh. The payments have been made in the name of Unique Tour and Travel and respondent no.2 is residing at same address and has admitted that it was personal vehicle and not a taxi but he has received payment as Unique Tour and Travel. It is observed that he is trying to stated lie to the court by saying that it was offered without consideration to officer of CBI. I reject this contention and accept the case of insurance company that owner violated the terms and conditions of insurance.

In view of this recovery rights are given to the insurance company against the respondent no.2 in each case but initially insurance company has to pay the compensation amount to petitioners.”

32. In the claim petitions filed by the Claimants in four different claim petitions in para-15, the name and address of the owner of the offending vehicle was given as “Satish Shukla, M/s. Unique Tour & Travels, 2/176, Vineet Khand, Gomti Nagar, Lucknow (U.P.).”. In para-23 of the petition, it was averred that Claimant Vijay Kumar, Claimant Harjeet Singh, deceased Asuthosh Pathak and deceased Attar Singh were travelling as passengers in taxi No.UP-32U-7459, make Maruti Van.

33. Respondent Satish Shukla filed a written statement wherein contents of para-15 were not denied either specifically or by unnecessary implications. In reply to para-23 of the petition, Respondent Satish Shukla (owner of vehicle No.UP-32U-7459) took the plea that the vehicle in question was not being used as a taxi. It was stated that the vehicle was borrowed by the CBI officers. It was being driven by the driver at the time of the accident under the supervision/guidance of the CBI personnel. The Respondent (the owner) was completely silent as to his relationship with M/s. Unique Tour & Travels. The owner did not state at that time that he had no connection with M/s. Unique Tour & Travels or that no such firm was in existence at the given address or that he was not residing at the given address. During the course of evidence, Vijay Kumar, one of the Claimants filed his affidavit by way of evidence testifying that he was heading a raiding party alongwith his team as passengers in taxi No.UP-32U-7459. He proved the bills of the taxi as Ex.PW1/3A/B. In cross-examination, the witness denied the suggestion that the Maruti Van was obtained *pro bono* from the owner because of influence of CBI. The witness stated that the payment of hire charges was made by cheque. To the same effect is the affidavit of Harjeet Singh and his cross-examination as PW2. PW7 Anil Mishra was examined by the claimants, who proved the bills Ex.PW7/A to Ex.PW7/I, the contingent raised by the department as Ex.PW7/J and the receipt issued by M/s. Unique Tour & Travels as Ex.PW7/K. A

suggestion was given to Anil Mishra that the CBI officers had gone to M/s. Unique Tour & Travels for hiring a vehicle and the vehicle being not available, the Respondent (Satish Shukla) was requested to give his vehicle to the CBI officers. It is important to note that no such suggestion was given to PW1 Vijay Kumar and PW2 Harjeet Singh who had hired the taxi and had travelled therein. PW7 Anil Mishra was simply concerned with processing the bills for payment to M/s. Unique Tour & Travels. It is important to note that the owner (Satish Shukla) was consistently shifting his stand. In the written statement filed by him, he did not controvert the averments about the ownership of the vehicle by M/s. Unique Tour & Travels as stated in para-15 of the petition. In the entire written statement, the owner was completely silent as to who was M/s. Unique Tour & Travels or that he had no connection with the same. He simply stated that the driver was driving the vehicle at the instructions/guidance of the CBI officers. He did not say that the driver was not his employee. Even in the evidence filed by Satish Shukla, it was not stated that the driver was not employed on the Van by him. For the first time, in his cross-examination on 28.10.2009, Respondent Satish Shukla testified that Asuthosh Pathak (now the deceased) himself had brought the driver alongwith him. If the Respondent Satish Shukla had taken the plea in the written statement that he had no connection with M/s. Unique Tour & Travels or with the driver of vehicle No.UP-32U-7459, the Petitioners and the insurer would have

brought in evidence to establish the same. Since no case was set up by Respondent Satish Shukla that he had no connection with M/s. Unique Tour & Travels or with the driver (Raj Bahadur), no evidence was produced by the Claimants and the insurer to establish Satish Shukla's connections with M/s. Unique Tour & Travels. In this view of matter, I find no reason to disbelieve PW7's testimony, who proved the bills and the receipt regarding the payment of the taxi fare to M/s. Unique Tour & Travels.

34. It is established on record that vehicle No.UP-32U-7459 was being used for hire in contravention of the contract of the insurance (the Insurance Policy) as also in violation of Section 149 (2) (a) (i) (a) of the Act. It goes without saying that the breach was willful. The insurer was, therefore, entitled to avoid the payment of compensation but for the statutory liability as held in *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338 and *National Insurance Company Limited v. Swaran Singh & Ors.* (2004) 3 SCC 297.

35. In *Lehu's* case (*supra*) in para-20 it was held as under:-

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver."

We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be above of liability. 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 (Skiandia Insurance Company Limited v. Kokilaben Chandravadan, (1987) 2 SCC 654, Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21, and New India Assurance Company v. Kamla, (2001) 4 SCC 342) cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

36. Similarly in Swaran Singh’s case (*supra*) in Paras 73, 77, 83, 104-107 it was held as under:-

“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.

x x x x x x x

77. In United Insurance Co. Ltd. v. Jaimy and Ors. 1998 ACJ 1318 (Ker.) it is stated:-

"Section 149(2) relates to the liability of the insurer and speaks of a situation in regard to which no sum shall be payable by an insurer in

respect of any judgment or award. In the context it is proved that an insurer to whom notice of bringing of any such proceeding is given, could defend the action stated in the said statutory provision. The contention in the context would be found in section 149(2)(a) in the event of a breach of a specified condition of the policy enabling the insurer to avoid liability in regard thereto. In the process in regard to the right of the insurer to recover the amount from the insured, it would have to be seen by referring to section 149(4) as to under what circumstances this can be successfully recovered from the insured.

Section 149(4) says that where a certificate of insurance is issued, so much of the said policy as purports to restrict the insurance of the persons insured thereby by referring to any of the conditions mentioned and it is precisely enacted in regard thereto that the liability covered by Section 2(b) as is required to be covered by the policy would not be available. The position is made further clear by the provisions enacting that any sum paid by the insurer in or towards the discharge of any liability of any person who is covered by the policy by virtue of this sub-section shall be recoverable by the insurer from that person.

In other words, section 149(4) considers the right of the insurance company in regard to reimbursement of the amount paid by them only in the context of a situation other than the one contemplated under Section 149(2)(b). It would mean that except under the situation provided by Section 149(2)(b), the insurer would not be in a position to avoid the liability because he has got

rights against the owner under the above provision.

The learned counsel strenuously submitted that this would not be the correct understanding and interpretation of the statutory provisions of section 149 of the 1988 Act. The learned counsel submitted that to read the statutory provision to understand that the insurance company could only claim from the owner in situations governed by section 149(2)(b) and to have no right under the said provision with regard to other situations under section 149(2)(a) would not be the proper reading of the statutory provision. The learned counsel submitted that in fact the provision would have to be meaningfully understood. It is not possible to consider the submission of the learned counsel in the light of the plain language of the statutory provision. It is necessary to emphasise that under the new Act the burden of the insurance company has been made heavier in the context of controlling the need of taking up contentions to legally avoid the liabilities of the insurance company."

x x x x x x x

83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficial provisions of the Act having regard to its purport and object, we fail to see a situation where beneficial provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been

drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with Sub-section (1) thereof. The right to avoid liability in terms of Sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

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.

106. It is well-settled rule of law and should not ordinarily be deviated from. (See The Bengal Immunity Company Limited v. The State of Bihar and Ors. AIR 1955 SC 661, Keshav Mills Co. Ltd. v. Commissioner of Income-Tax, Bombay North, AIR 1965 SC 1636 , Union of India and Anr. v. Raghubir Singh (Dead) By LRs. Etc. (1989) 2 SCC 754, Gannon Dunkerley and Co. & Ors. v. State of Rajasthan & Ors., (1993)1 SCC 364, Belgaum Gardeners Cooperative Production Supply and Sale Society Ltd. v. State of Karanataka, 1993 Supp (1) SCC 96 (1), Hanumantappa Krishnappa Mantur and Ors. v. State of Karnataka, 1992 Supp. (2) SCC 213.

x x x x x x x

107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.”

37. The law regarding the statutory liability of the insurance company to satisfy the award for breach of the terms and conditions of the policy of insurance and Section 149(2)(a) was analyzed by this Court in *New India Assurance Company Ltd. v. Sanjay Kumar and Ors*, ILR (2007) II Delhi 733 wherein this Court relied on the judgment of the Supreme Court in *Skandia*

Insurance Company Limited v. Kokilaben Chandravadan (1987) 2 SCC 654, *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21; (three Judges bench), *New India Assurance Co., Shimla v. Kamla and Ors.*, (2001) 4 SCC 342, *Lehru & Ors.* (*supra*), *Swaran Singh* (*supra*) case and on interpretation of the decision in *Sohan Lal Passi* (*supra*) and *Swaran Singh* (*supra*), it was held that the liability of the insurance Co., vis-à-vis third party claims was statutory in terms of Section 149(4) where ever a policy has been obtained by the insured under Section 147(3) of the Act, except where the breach is under Section 149(2)(b) of the Motor Vehicles Act, 1988. In other words, where the policy was void on the ground that it was obtained by the non-disclosure of a material fact or by representation of a fact which was false in some material particular, the Insurance Company will not be liable at all. Evidently, where the policy is void there cannot be any liability under the policy against the Insurance Company. Except in these cases all the other cases covered under Section 149(2)(a) even in the case of willful breach, though the Insurance Company is entitled to avoid the policy, but on the account of Sub-section (4) it will pay and recover the compensation from the Insured. The relevant paras of the report are extracted hereunder:

“16. The legal position could therefore be stated as follows:-

(a) Where the offending vehicle is admittedly an insured vehicle, limited to the terms of the policy of insurance,

the insurance company is obliged to take over the liability of the assured and pay the sum awarded by the Tribunal to the claimant.

(b) Where the insurance company alleges breach of the terms and conditions of the policy of insurance and Section 149 (2)(a) of the M.V. Act, 1988 is attracted, on proof of violation of a breach of a specified condition of a policy, the insurance company would still be liable to pay the sum awarded to the claimants but would be entitled to recovery rights against the assured, meaning thereby, on proof of having satisfied the award in favour of the claimant would be entitled to recover the said amount from the assured.

(c) Where the policy is avoided on proof of facts which attracts Section 149(2) (b) of the M.V. Act, 1988, the liability of the insurance company to pay under the policy of insurance stands avoided vis-a-vis even the third parties, meaning thereby the Tribunal would have no power to direct recovery against the insurance company.

(d) Mere breach of the conditions of the policy would not entitle the insurance company to either avoid liability to pay or have recovery rights against the assured unless the insurance company additionally proves that the assured, knowingly and consciously breached the terms of the policy or by proving facts evidencing conduct of acting so recklessly as to denote that the assured did not care what the consequences of his act might be.”

38. In this view of matter, the insurer was not entitled to be exonerated but has been rightly granted the recovery rights by the Tribunal.

39. In view of above discussion, MAC Appeal Nos. 454/2010, 455/2010, 456/2010 and 464/2010 are devoid of any merit, the same are accordingly dismissed.
40. The Insurance Company is directed to make payment of enhanced compensation in MAC APP Nos. 466/2010, 451/2010 and 459/2010 with interest as stated earlier through the Registrar General of this Court within 30 days.
41. MAC APP. Nos. 466/2010, 451/2010 and 459/2010 are allowed in above terms.
42. No costs.

(G.P. MITTAL)
JUDGE

FEBRUARY 21, 2012

vk/sb