

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

Date of decision: 2nd November, 2012

+ **MAC APP.492/2008**

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Ms. Mannusha Wadhwa, Adv. with
Ms. Arpan Wadhawan, Adv.

Versus

SH. RAJ PRAKASH & ORS. Respondents

Through: Mr. Navneet Goyal, Adv. with
Ms. Suman N. Rawat, Adv. for R-1 &
R-2.

+ **MAC APP.516/2012**

SH. RAJ PRAKASH & ANR. Appellants

Through: Mr. Navneet Goyal, Adv. with
Ms. Suman N. Rawat, Adv. for R-1 &
R-2.

Versus

NATIONAL INSURANCE COMPANY LTD & ORS. Respondents

Through: Ms. Mannusha Wadhwa, Adv. with
Ms. Arpan Wadhawan, Adv. for R-1.

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 07.07.2008 whereby compensation of ₹1,80,000/- was awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Respondents No.1 and 2 for the death of their minor daughter Jagriti,

aged about eight years in a motor vehicle accident which occurred on 14.04.2000.

2. While awarding the compensation, the Appellant Insurance Company was made liable to pay the compensation with the right to recover the same from Respondent No.2 Dinesh Kumar the owner of the offending vehicle No.HR-29C-3325.
3. The Appellant Insurance Company's grievance is that since it was proved that the driver did not possess a driving licence at all, the Appellant was not at all liable to pay the compensation. In the alternative, it is urged that the recovery rights should have been granted against Respondent No.3 Jogender Kumar Gautam (the driver of the offending vehicle) also.
4. Cross Objections being MAC APP.516/2012 have been preferred by Respondents No.1 to 2 (the Claimants) on the ground that the compensation awarded is very meagre.
5. It is stated that on the basis of the judgment of this Court in *National Insurance Company Limited v. Farzana & Ors.*, 2009 ACJ 2763, the Respondents No.1 and 2 (the Claimants) were entitled to a compensation of ₹3,75,000/-.

QUANTUM

6. This case is covered by the judgment of this Court in *Farzana & Ors.(supra)*, 2009 ACJ 2763, where after considering the judgments of the Supreme Court, a compensation of ₹3,75,000/- was awarded. I extract paras 4 to 8 of the judgment as under:-

“4. In the case of Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257, the Hon’ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-

5. The case of Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997 relates to the death of a 12-year old boy. Following the decision of the Apex Court in Manju Devi’s case (supra), the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

6. The case of Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320 relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in Manju Devi’s case (supra) awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to $\text{Rs.15,000} \times 15 = \text{Rs.2,25,000/-}$.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of R.K. Malik vs. Kiran Pal, III (2006) ACC 261, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out

for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as R.K. Malik vs. Kiran Pal, 2009(8) Scale 451. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children.....”

7. Considering the latest judgment of the Supreme Court in *R.K. Malik v. Kiran Pal, 2009 (8) Scale 451*, the Claimants are entitled to a compensation of ₹3,75,000/- i.e. ₹2,25,000/- on account of loss of dependency, ₹75,000/- towards future prospects and ₹ 75,000/- towards non pecuniary damages.
8. The overall compensation is enhanced from ₹1,80,000/- to ₹3,75,000/-.
9. The enhanced compensation of ₹1,95,000/- shall carry interest @ 7.5% per annum from the date of filing of the petition till the date of payment.

LIABILITY

10. By the impugned judgment, the Claims Tribunal held that the driver and owner of the offending vehicle (Respondents No.3 and 4) failed to prove any driving licence in spite of the service of notice Exs.R3W1/2 and R3W1/3. The postal receipts were proved as Ex.R3W1/6-9 and AD card as Ex.R3W1/6. The driver Jogender Kumar Gautam was also prosecuted to drive the vehicle without licence at the time of the accident. The charge sheet in respect of the criminal case was proved as Ex.R3W1/11. The Claims Tribunal on the basis of the evidence adduced held that the

Appellant successfully proved the willful breach of terms and conditions of the policy. The finding is well reasoned. All the more, the same has not been challenged by the driver and the owner.

11. The issue of satisfying the third party liability even in case of breach of the terms of insurance policy is settled by the three Judge Bench report in *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21. 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 under Section 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 willful. 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/tortfeasor either in the same proceedings or by independent proceedings as the case may be, as ordered by the Claims Tribunal or the Court. 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 Company Limited v. Kokilaben Chandravadan*, (1987) 2 SCC 654 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 three Judge Bench of 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*. In *New India Assurance Co., Shimla v. Kamla and*

Ors., (2001) 4 SCC 342, the Supreme Court referred to the decision of the two Judge Bench in *Skandia*, the three Judge Bench decision in *Sohan Lal Passi* and 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 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 Company Limited v. Kokilaben Chandravadan, (1987) 2 SCC 654. 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 v. P. Sesh Reddy, (1996) 5 SCC 21.

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.....”

12. Again in *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338, 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 willful breach as provided under Section 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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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.”

13. The three Judge Bench of the Supreme Court in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 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.”

14. This Court in *Oriental Insurance Company Limited v. Rakesh Kumar and Others*, 2012 ACJ 1268 noticed some divergence of opinion in *National Insurance Company Limited v. Kusum Rai & Ors.*, (2006) 4 SCC 250, *National Insurance Company Limited v. Vidhyadhar Mahariwala & Ors.*, (2008) 12 SCC 701; *Ishwar Chandra & Ors. v. The Oriental Insurance Company Limited & Ors.*, (2007) 10 SCC 650 and *Premkumari & Ors. v. Prahalad Dev & Ors.*, (2008) 3 SCC 193 and held that in view of the three Judge Bench decision in *Sohan Lal Passi(supra)* and *Swaran Singh*, the liability of the Insurance Company vis-à-vis the third party is statutory. If the Insurance Company successfully proves the conscious breach of the terms of the policy, then it would be entitled to recovery rights against the owner or driver, as the case may be.
15. In the circumstances, I am 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 is entitled to recover the amount of compensation paid from the owner and the driver.
16. A perusal of the judgment shows that the recovery rights were granted only qua Respondent No.4 herein, that is, the owner of the vehicle. Since Respondent No.3 being driver of the offending vehicle was the principal tortfeasor, the Appellant Insurance Company is entitled to recover the same from him as well. It is therefore, held that the compensation already paid and the enhanced compensation of ₹ 1,95,000/- shall be

recoverable by the Appellant Insurance Company from the Respondents No.3 and 4 (the driver and the owner of the vehicle).

17. By an order dated 12.09.2008 while issuing notice of the Appeal, execution of the award was stayed subject to deposit of the compensation with the Registrar General of this Court and 50% thereof was ordered to be released in favour of Respondents No.1 and 2 (the Claimants). Balance 50% thereof shall be released to the Respondents No.1 and 2 in terms of the order passed by the Claims Tribunal.
18. The Appellant Insurance Company is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks which shall be equally apportioned amongst the Claimants and shall be released on deposit.
19. Both the Appeals are disposed of in above terms.
20. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
21. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 02, 2012
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