

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

Reserved on: 30th August, 2012
Pronounced on: 6th September, 2012

+ **MAC APP.629/2010**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Ms. Manjusha Wadhwa, Advocate

Versus

MAMTA KUMARI & ORS Respondents
Through: Mr. Vijay Wadhwa, Advocate for the
Respondent No.1.
Mr. Ranvir Vats, Advocate for the
Respondent No.3.

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

J U D G M E N T

G. P. MITTAL, J.

1. This Appeal is directed against a judgment dated 23.07.2010 passed by the Motor Accident Claims Tribunal (Claims Tribunal) whereby a compensation of ₹10,27,636/- was awarded in favour of Mamta Kumari, the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 02.06.2008.
2. As per the averments made in the Claim Petition on 02.06.2008 at about 10:30 pm the First Respondent along with other persons was proceeding to Baba Vadbhag Singh Mandir, Mairi, Una (H.P.) for holy *darshan* in Tata Qualis No.DL-5C-B-4690. The Qualis was being driven by the Respondent Ravi Kant in a rash and negligent manner. On account of

rash and negligent driving, the Qualis struck against a pavement, overturned and fell into a pit, as a result of which the occupants of Qualis including the First Respondent suffered injuries.

3. The injuries in the case of the First Respondent were very serious; she suffered severe head injuries (multiple haemorrhagic contusions), injuries on the face, fracture on left hand and abrasions all over her body. She was immediately removed to Civil Hospital, Roop Nagar (Punjab) which was close to the place of accident. Since adequate treatment was not available in the Civil Hospital, she was shifted to PGI Chandigarh on the same day. The First Respondent went into coma and was, therefore, admitted in NINS Brain and Spine Hospital, Sector 34, Chandigarh on 04.06.2008 where subclavian cannulation was done and she was put on ventilator. On 07.06.2008, tracheostomy was done; on 08.06.2008 the MRI taken revealed that there were multiple haemorrhagic contusions. She (the First Respondent) was again put on ventilator and was discharged on 11.07.2008 with advice to be on semi solid diet and to take physiotherapy as her left portion was still paralyzed. The First Respondent was issued a disability certificate Ex.P1/70(Ex.PW2/A) to the effect that she was a case of quadriparesis and her physical disability was 75% in respect of her whole body.
4. In the Claim Petition, it was averred that she was a student of B.Com. final year and could not pursue her studies on account of injuries suffered. During evidence, it was brought on record that she had completed her B.Com. final year. The First Respondent claimed that there was an expenditure of ₹3,50,000/- on her treatment; she had to take a special diet and physiotherapy; there was expenditure on conveyance; she had to engage an attendant and was unable to work at all on account

of the permanent disability. The Claims Tribunal, as stated earlier, awarded a compensation of ₹10,27,636/-, which is tabulated hereunder:

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Medical Treatment	₹2,25,507/-
2.	Loss of Earning Capacity due to Disability	₹ 6,72,129/-
3.	Pain and Suffering	₹ 50,000/-
4.	Loss of Marriage Prospects	₹ 50,000/-
5.	Conveyance, Special Diet and Attendant	₹ 30,000/-
	Total	₹ 10,27,636/-

5. The finding on negligence is not challenged by the Appellant Insurance Company. The driver and the owner of Tata Qualis have not filed any Appeal, thus the finding on negligence has attained finality.
6. There is twin challenge to the impugned judgment. First, that the compensation awarded towards loss of earning capacity is on the higher side, and second that the Tata Sumo No.DL-5C-B-4690 was being used for hire and reward, yet instead of exonerating the Appellant Insurance Company of its liability to pay the compensation, it was made liable to pay the compensation with a right to recover the same from Respondents No.2 and 3.
7. The finding with regard to the breach in the terms of the policy reached by the Claims Tribunal and granting of recovery rights against Second and Third Respondent has also not been challenged by the owner and driver. (Respondents No.2 and 3).

8. During inquiry before the Claims Tribunal, the First Respondent examined Dr. Naresh Chandra (PW2), In-charge Orthopaedics, Guru Gobind Singh Government Hospital, Raghubir Nagar, Delhi. He proved the disability certificate Ex.PW1/70 declaring the First Respondent to be permanently disabled to the extent of 75% in relation to her whole body. He testified that due to this disability, the First Respondent would not be able to do normal work, to move, to sit and get up independently and climb the stairs without any assistance. The Claims Tribunal, apart from awarding compensation towards treatment on proof of actual bills, awarded a compensation of ₹50,000/- towards pain and suffering, ₹50,000/- towards loss of marriage prospects. No compensation was awarded towards disfigurement and loss of amenities in life. I was, prima facie, of the view that the compensation awarded was inadequate and niggardly keeping in view the injuries suffered and the condition of the First Respondent. Therefore, I directed the parties to address their argument as this appeared to be a case for enhancement of compensation.
9. It is urged by the learned counsel for the Appellant Insurance Company that the First Respondent has not filed any Cross-Objections or Cross-Appeal and, therefore, this Court is not empowered to enhance the compensation. It is urged that the compensation awarded towards loss of earning capacity to the extent of 100% is excessive as the First Respondent had suffered disability of only 75%. It is contended that the First Respondent was vacillating her stand in as much as that in the Claim Petition it was averred that she was a student of B.Com. final year at the time of the accident, whereas during evidence a case was set up that she has completed her graduation in commerce.

10. Before dealing with the quantum of compensation, I would first advert to the question whether there could be enhancement of compensation in a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) or in an Appeal filed by the driver/owner/Insurance Company without filing any Cross-Objections?
11. Section 166 of the Motor Vehicles Act, 1988 (the Act) enjoins payment of just compensation. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....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'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

12. In *Rattan Lal Mehta v. Rajinder Kapoor & Anr.*, 1996 ACJ 372, a Division Bench of this Court speaking through the Hon’ble Chief Justice held that full and fair compensation has to be paid for pecuniary and non-pecuniary damages and not as a matter of solace. Non-pecuniary damages cannot be kept low because pecuniary damages are high. It was held that there should not be generally any discrimination between rich and poor victims for evaluating non-pecuniary damages. The Division Bench held that claims under different sub-heads can be altered but the compensation more than the amount claimed cannot be awarded. Para 24 of the report is extracted hereunder:

“24. It is also now settled that though claimants might have estimated in the pleadings different sums under different sub-

heads, it is still open to the Court to award higher under one sub-head or lower under another, than claimed, so long as the award does not exceed the total amount claimed. Such a principle was laid down in Bai Nanda v. Shivabhai Shankarbhai Patel 1966 ACJ 290 Gujarat), (in fact, that was a case of murder), Judgment was by J.B. Mehta and M.V. Shah, JJ. The adjustment was between claims towards loss to dependency and loss to the estate. The same principle was extended to claims in injuries cases in Babu Mansa v. Ahmedabad Municipal Corporation, 1978 ACJ 485(Gujarat), by P.D. Desai, J. (as he then was) and M.K. Shah, J. ”

13. The theory of not awarding compensation more than the amount claimed got a sea change with the judgment of the Supreme Court in *Nagappa v. Gurudayal Singh & Ors.*, (2003) 2 SCC 274, wherein the Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the Claimant. In an appropriate case where from the evidence brought on record if the Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such an award. The Supreme Court said that the only embargo was; that it should be ‘just’ compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable. Para 21 of the report is extracted hereunder:

“21. In our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award ‘just’ compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section(4) to Section 166, even report submitted to the Claims Tribunal under Sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act, If required, in appropriate cases, Court may permit amendment to the claim Petition.”

14. In *National Insurance Company Ltd. v. Rani*, 2006 ACJ 1224, a Division Bench of Madras High Court held that without filing any Appeal or Cross-Objections, High Court is competent to enhance the compensation in favour of a victim of a motor vehicle accident by invoking provisions of Order XLI Rule 33 Code of Civil Procedure(Code). Para 16 of the report is extracted hereunder:

“16. At the risk of repetition it may be stated that the contention put forward is that the Court is duty bound to fix the just compensation. The fact that the Claimants have not filed any cross objection would not stand in the way and further the Court can by invoking the powers conferred under Order XLI Rule 33 of CPC, is satisfied, can enhance the compensation and call upon the Claimants to pay necessary court fee. In that context, the learned counsel also submitted, when the Supreme Court has ruled that even at the appellate stage original petition can be amended claiming enhanced compensation, the Court enhancing compensation in the instant case, if satisfied, invoking powers under Order XLI, Rule 33 will certainly be in order.”

15. In *Oriental Fire and General Insurance Co. Ltd. v. Amarsingh Pratapsingh Sikliker*, 1(1993) ACC 627, a Division Bench of Gujarat High Court held that the Appellate Court was empowered to grant adequate compensation so as to do substantial justice between the parties even in absence of Cross-Objections or Appeal. Para 17 of the report is extracted hereunder:

“17. It becomes very clear from the aforesaid provisions that the appellate Court is empowered to grant adequate relief so as to do substantial justice between the parties even in absence of cross-objections or appeal....”

16. In *Sone Ram v. Jayaprakash*, AIR 1986 MP 21, the High Court of Madhya Pradesh exercising power under Order XLI Rule 33 of the Code enhanced the compensation granted by the Claims Tribunal even though no Appeal was preferred by the Claimant. In the case of *Sewaram alias Sewan v. Nanhe Khan alias Asgar Beg*, 1987 ACJ 354(MP), the High Court of Madhya Pradesh awarded 10% interest on the compensation amount in the absence of any Appeal or Cross-Objections by the Claimants.
17. A learned Single Judge of this Court in *National Insurance Co. Ltd. v. Komal & Ors.*, MANU/DE/2870/2012, (MAC. APP. No.595/2007 decided on: 27.04.2012) referred to the judgments of the Supreme Court in *Pannalal v. State of Bombay*, AIR 1963 SC 1516; *Rameshwar Prasad v. M/s Shyam Beharilal Jagannath*, (1964) 3 SCR 549; *Nirmal Bala Ghose v. Balai Chand Ghose*, AIR 1965 SC 1874; *Giasi Ram v. Ramjilal*, AIR 1969 SC 1144; *Harihar Prasad Singh v. Balmiki Prasad Singh*, (1975) 2 SCR 932; *Mahant Dhangir v. Madan Mohan*, (1988) 1 SCR 679; *State of Punjab v. Bakshish Singh*, (1999) 8 SCC 222 and judgments of various High Courts to opine that the High Court is empowered to enhance the compensation without filing any Appeal or Cross-Objections by a Claimant.
18. In *Ibrahim v. Raju*, AIR 2012 SC 534, a compensation of ₹3,00,000/- was claimed by the Appellant which resulted in an award of ₹60,000/- by the Claims Tribunal. The compensation was enhanced to ₹1,89,440/- by the High Court, which was enhanced to ₹6,00,000/- by the Supreme Court. Para 21 of the report is extracted hereunder:

“21. We are conscious of the fact that in the petition filed by him, the Appellant had claimed compensation of Rs. 3 lacs only with

*interest and cost. It will be reasonable to presume that due to financial incapacity the Appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. **However, as the Tribunal and the High Court and for that reason this Court are duty bound to award just compensation,** (emphasis supplied) we deem it proper to enhance the compensation from Rs. 1,89,440/- to Rs. 6 lacs. This approach is in tune with the judgment in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire, 1987 ACJ 311(Bombay), Orissa High Court in Mulla Mod. Abdul Wahid v. Abdul Rahim, 1994 ACJ 348 (Orissa) and Punjab and Haryana High Court in Devki Nandan Bangur v. State of Haryana, 1995 ACJ 1288 (P & H).”*

19. In *New India Assurance Co. Ltd. v. Gopali & Ors.*, Civil Appeal No.5179 of 2012 (arising out of SLP (C) No.11345 of 2007) decided by the Supreme Court on 05.07.2012, the New India Assurance Co. Ltd. challenged an award of compensation of ₹6,45,300/-. The compensation was, however, enhanced to ₹10,63,040/- by the Supreme Court.
20. It goes without saying that cases of serious injuries, that is, amputation of limbs, paraplegia, quadriplegia etc. are worse than death cases. It is not only the victim (the injured), but the entire family who suffers throughout the time till the injured with the serious disability survives.
21. In *Arvind Kumar Mishra v. New India Assurance Company Limited*, (2010) 10 SCC 254, the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.”

22. In *Nizam’s Institute of Medical Sciences v. Prasanth S. Dhananka & Ors.*, (2009) 6 SCC 1, the Supreme Court emphasized that cases of serious injuries in motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

“90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

23. In *Kavita v. Deepak & Ors.*, Civil Appeal No.5945/2012 decided on 22.08.2012, the Supreme Court laid down that an attempt should always be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident.

24. Thus, there is no manner of doubt that if the High Court finds that the compensation awarded is not just and reasonable, it is empowered to enhance the compensation without filing of Appeal or Cross-Objections by the Claimant.
25. The Appellant Insurance Company sought to make out a case that the First Respondent misled the Claims Tribunal by initially stating that she was a student of B.Com. final year and later on stated that she had completed her graduation. It is established on record from the document Ex.PW1/68 that the First Respondent had already completed her graduation. The First Respondent clearly stated in her cross-examination that the factum of her being a student of B.Com final year was not correct. No explanation was sought from her as to why she did not state this fact in the Claim Petition. I do not know the condition of the Appellant. Admittedly, she is a case of quadriparesis on account of head injuries suffered by her. I would not fathom into the reason as to why instead of disclosing that she had completed her B.Com. (final year) she stated that she was a student of final year. The fact remains that she would not be able to do any work and has to be granted adequate compensation towards loss of earning capacity.
26. In *Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343*, the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the

injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

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14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

27. I have before me Dr. Naresh Chandra's (PW-2's) testimony. He was categorical that on account of the disability suffered by her, the First

Respondent would not be able to do normal work, to move, to sit, get up independently and climb stairs without any assistance. Thus, it is evident that the First Respondent would not be able to carry out any work at all throughout her life. Her loss of earning capacity is 100%.

28. As stated earlier, it is established on record that she is a Commerce Graduate. On conservative estimate, I take minimum wages of a Graduate and make an addition of 30% towards the inflation on the basis of the Supreme Court judgment in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 as noticed by this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012.
29. The loss of earning capacity thus comes to ₹12,33,554/- (4393/- + 30% x 12 x 18).
30. The Claims Tribunal did not award any compensation towards future treatment. Admittedly, the First Respondent did not produce any evidence with regard to her future treatment. Considering the permanent disability and testimony of Dr. Naresh Chandra (PW-2), I would make a provision of ₹25,000/- towards future treatment.
31. In *Kavita v. Deepak & Ors.*, Civil Appeal No.5945/2012 decided on 22.08.2012, where the victim became paraplegic, a compensation of ₹3,00,000/- towards pain and suffering and ₹3,00,000/- towards loss of amenities in life was awarded.
32. In the case of *Govind Yadav v. New India Insurance Co. Ltd.* (2011) 10 SCC 683, where a victim aged about 24 years suffered amputation of one leg above knee, a compensation of ₹1.5 lacs was awarded towards pain

and suffering and another sum of ₹1.5 lacs was awarded towards loss of amenities in life and loss of marriage prospects.

33. Thus, the compensation of ₹50,000/- each awarded towards pain and suffering and loss of marriage prospects is on the lower side. Keeping in view the long duration of the treatment and the fact that the First Respondent shall suffer disability and pain throughout her life, I would make a provision of ₹1.5 lacs towards pain and suffering and ₹1.5 lacs towards loss of marriage prospects including loss of amenities in life.
34. The First Respondent has not been granted any compensation towards Attendant charges. I have earlier referred to the testimony of PW-2 Dr. Naresh Chandra who stated that the First Respondent would not be able to do normal work, would not be able to move, sit and get up independently, she would not be able to climb stairs without any assistance.
35. In *Delhi Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558*, a Division Bench of this Court held that a victim cannot be deprived of compensation towards gratuitous services rendered by some family members for the benefit of the tortfeasor. I therefore, award a compensation @ ₹1000/- per month and on applying a multiplier of 18, it comes to ₹2,16,000/- (1000/- x 12 x 18).
36. The compensation awarded is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Loss of Earning Capacity	₹12,33,554/-
2.	Pain and Suffering	₹ 1,50,000/-
3.	Loss of Marriage Prospects & Loss of	₹ 1,50,000/-

	Amenities in Life	
4.	Attendant Charges (Gratuitous Services)	₹2,16,000/-
5.	Medicines and Medical Treatment	₹2,25,507/-
6.	Conveyance & Special Diet	₹ 30,000/-
7.	Future Treatment	₹ 25,000/-
	Total	₹ 20,30,061/-

37. The compensation is thus enhanced from ₹10,27,636/- to ₹20,30,061/-.
38. The enhanced compensation of ₹10,02,425/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
39. Now, I turn to the Appellant's contention on liability. It is urged by the learned counsel for the Appellant that since the Qualis was being used for hire and reward, the Respondent No.3 committed a willful breach of the terms of the policy. Learned counsel for the Appellant urges that the Claims Tribunal instead of absolving the Appellant Insurance Company directed it to pay the compensation with the right to recover it from Respondents No.2 and 3 (the driver and owner).
40. The issue of satisfying the third party liability even in case of breach of the terms of insurance policy is settled by 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(supra)* analyzed the corresponding provisions under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in *Skandia (supra)*. 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(supra)*, the three Judge Bench decision in *Sohan Lal Passi(supra)* 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.....”

41. 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(supra)*, *Sohan Lal Passi(supra)* and *Kamla(supra)* 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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xxxx xxxx xxxx xxxx xxxx

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.”

42. 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 (supra)*, *Kamla (supra)* and *Lehru (supra)*. 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.”

43. This Court in *MAC APP. No.329/2010 Oriental Insurance Company Limited v. Rakesh Kumar and Others* and other Appeals decided by a common judgment dated 29.02.2012, 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(supra)*, 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.

44. Thus, the Appellant was entitled to only recovery rights which have been duly granted.
45. The compensation deposited shall be released in favour of the First Respondent/held in fixed deposit in terms of the order passed by the Claims Tribunal.
46. Appellant Oriental Insurance Company Limited is directed to deposit the enhanced compensation ₹10,02,425/- along with interest with UCO Bank, Delhi High Court Branch, New Delhi within six weeks.
47. 80% of the enhanced compensation shall be held in fixed deposit for a period of two years, four years, six years, eight years, ten years, twelve years, fourteen years, sixteen years, eighteen years and twenty years in equal proportion. The First Respondent would be entitled to draw quarterly interest on the abovesaid fixed deposits. 20% of the enhanced compensation shall be released to her on deposit.
48. It goes without saying that the Appellant Insurance Company would be entitled to recover the compensation amount from the Respondents No.2 and 3 in execution of this judgment without having recourse to independent proceedings.
49. The Appellant Insurance Company shall file a report regarding deposit of the enhanced compensation within eight weeks.

50. The Appeal stands disposed of in above terms.
51. Pending Applications also stand disposed of.
52. List on 09.11.2012.

(G.P. MITTAL)
JUDGE

SEPTEMBER 06, 2012
pst/vk