

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

Date of decision: 15th February, 2012

+ **MAC.APP. 497/2009**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Manoj Ranjan Sinha,
Advocate

versus

VIMLA SHARMA & ORS. Respondents

Through: Mr. S.K. Vashisth, Advocate
for R-1 to R-6.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant National Insurance Company Limited impugns the judgment dated 04.07.2009 whereby a compensation of ₹ 8,39,375/- along with interest @ 7% per annum was granted in favour of Respondents No.1 to 6.
2. The only ground of challenge is that Ijjajuddin Respondent No.7 was holding a licence to drive a motor cycle and motor car. He did not possess any licence to drive a transport vehicle i.e. Tata 407 bearing No.DL-1LG-1849 involved in the accident and thus, the Insurance Company had no liability to pay at all.
3. By the impugned judgment, the Motor Accident Claims

Tribunal (the Claims Tribunal) held that the Appellant Insurance Company was able to prove the breach of the terms of the policy, yet, fastened the liability on the Insurance Company to pay the compensation awarded in the first instance and then to recover the same. In view of the three Judges Bench decision of the Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh & Ors.*, 2004 (3) SCC 297 it is settled that, in case of a third party claim, the Insurance Company had statutory liability to satisfy the judgment in the first instance and then to recover the same from the owner and the driver. In *Swaran Singh (supra)*, 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.

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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."

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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 beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent 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.

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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.”

4. In *United India Insurance Company Ltd. v. Lehru & Ors.*, (2003) 3 SCC 338; which was noted in *Swaran Singh (Supra)* it was held that even in the case where a willful breach on the part of the insured is established, the Insurance Company would remain liable to the third parties. But, it may be able to recover the amount paid from the insured. Para 20 of the report is extracted hereunder:-

“20. When an owner is hiring a driver he will therefore have to check whether the driver was 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 should 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 notice that the licence was fake and still permitted that person to drive. More importantly, even in

such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia 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 Ltd. v. Kamla*, (2001) 4 SCC 342. We are in full agreement with the views expressed therein and see no reason to take a different view.” (underlines are mine)

5. Similar view was taken in *New India Assurance Co., Shimla v. Kamla and Ors.*, (2001) 4 SCC 342, *Oriental Insurance Co. Ltd. v. Zaharulnisha and Ors.*, (2008) 12 SCC 385, *National Insurance Company Limited v. Geeta Bhat & Ors.*, 2008 (12) SCC 426, and *National Insurance Company Limited v. Laxmi Narain Dhut*, (2007) 3 SCC 700.
6. In *National Insurance Company Limited v. Kusum Rai & Ors.* (2006) 4 SCC 250, the Supreme Court held that the Appellant Insurance Company was not liable to pay the compensation as the driver did not possess a valid driving licence, yet exercising its jurisdiction under Article 136 of the Constitution of India, it directed the Appellant Insurance Company to pay the compensation and recover the amount from the owner of the vehicle.
7. In view of the authoritative pronouncement in *Swaran Singh* (*supra*) which is a three Judges Bench decision, the Insurance Company was liable to pay and recover the awarded amount from the owner of the offending vehicle.

8. No interference is called for in the impugned judgment. The Appeal is dismissed being devoid of any merit.
9. Statutory amount of ₹25,000/- deposited by the Appellant Insurance Company may be refunded to it through its counsel.
10. The amount deposited by the Insurance Company shall be disbursed to the Respondents No.1 to 6 in terms of the impugned award.

(G.P. MITTAL)
JUDGE

FEBRUARY 15, 2012

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