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

Date of decision: 11th October, 2012

+ **MAC.APP. 37/2008**

NATIONAL INSURANCE CO. LTD. Appellant
Through Mr.Pradeep Gaur, Advocate
versus

ABHA GOEL & ORS. Respondents
Through Ms.Pooja Goel, Advocate for the
Respondents No.1 & 2.

+ **MAC.APP. 896/2011**

ABHA GOEL & ORS. Appellants
Through Ms.Pooja Goel, Advocate
versus

NATIONAL INSURANCE CO. LTD. Respondent
Through Mr.Pradeep Gaur, Advocate for the
Respondent Insurance Company.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals (MAC.APP.37/2008 and MAC.APP.896/2011) arise out of a common judgment dated 13.11.2007 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹17,63,334/- was awarded for the death of Rajat Goel, a bachelor aged 22 years at the time of the accident. For the sake of convenience, the Appellant National Insurance Co. Ltd. in MAC.APP.37/2008 shall be

referred to as the Insurance Company and the Appellants in Cross-Appeal MAC.APP.896/2011 shall be referred to as the Claimants.

2. The finding on negligence reached by the Claims Tribunal is not challenged by the Appellant Insurance Company. The same has attained finality.
3. Deceased Rajat Goel was a final year Electrical Engineering student in Ideal Institute of Technology, Ghaziabad. During inquiry before the Claims Tribunal, it was claimed that the deceased was in business of distribution of IGNOU books and was pursuing Electrical Engineering. He had very bright future prospects. The Claimants placed on record an Income Tax Returns filed for the A.Y. 2003-04 and 2004-05 to show that the deceased had returned a taxable income of ₹1,03,900/- and 1,27,503/- respectively. A placement letter Ex.PW3/A was proved which showed that the deceased was offered placement by Ghaziabad Precision Products Pvt. Ltd. at a stipend of ₹6,500/- per month and he was to get a salary of ₹12,000/- per month after completion of one year of training period. The Claims Tribunal considered the deceased's income as per his Income Tax Returns, added 50% towards inflation, deducted 1/3rd towards personal and living expenses and applied a multiplier of 17 to compute the loss of dependency as ₹17,33,334/-. On adding a sum of ₹30,000/- towards non-pecuniary damages, an overall compensation of ₹17,63,334/- was awarded.
4. The Appellant Insurance Company sought to avoid the liability on the ground that Respondent Panna @ Banna did not possess a valid and

effective driving licence to drive a truck (that is, a heavy motor vehicle) at the time of the accident and thus it was not liable to indemnify the insured. The Claims Tribunal rejected the plea on the ground that there was an endorsement on the driving licence possessed by Respondent Panna to drive a transport vehicle for the period 03.01.1998 to 02.01.2001 which entitled him to drive the same as the licence initially issued for LMV was valid upto 29.09.2016.

5. The following contentions are raised on behalf of the Appellant Insurance Company.
 - (i) The Claims Tribunal erred in placing reliance on the Income Tax Returns Exs. PW1/2A and PW1/2B filed by the Claimants. No witness from the Income Tax Department was produced to prove that the Income Tax Returns nor the computation of income as mentioned in the annexures was filed.
 - (ii) Deceased Rajat Goel was not doing Engineering from any prestigious institution, the compensation awarded by the Claims Tribunal is excessive and exorbitant.
 - (iii) The Claims Tribunal erred in assuming that the endorsement for three years to drive a transport vehicle would entitle the driver to drive the same till the validity of the licence to drive LMV.
6. On the other hand, the learned counsel for the Claimants urges that the compensation awarded is on the lower side. In addition to the compensation awarded on the basis of the Income Tax Returns, the

Claimants should have been granted compensation on the potential income of an Engineer.

QUANTUM OF COMPENSATION:

7. In order to prove that the deceased Rajat Goel was carrying out the business of distributing IGNOU books, Abha Goel(PW1) filed her affidavit Ex.P1. In para 5, she testified that her deceased son was in the business of distributing of IGNOU books in the name of Rajat Book Depot. He was earning ₹20,000/- per month from the business. The witness did not give the details of the shop or the premises from where the business was being carried out. As stated earlier, two Income Tax Returns Ex.PW1/2A for F.Y. 2002-03 and Ex.PW1/2B for F.Y. 2003-04 were placed on record. A perusal of these Income Tax Returns shows that computation of income was also filed along with these ITRs. However, the computation of Income tax was not produced before the Claims Tribunal. No witness from the Income Tax Department was summoned to prove as to when these Income Tax Returns were filed. The serial numbers of the receipts of these Income Tax Returns are 3504000616 and 3504000617 which shows that these Income Tax Returns were filed on the same day. I am not even sure whether these Income Tax Returns were filed before or after the death of the deceased Rajat Goel as even the date of submitting the Income Tax Returns is not mentioned and the date of receipt is not legible. In the circumstances, it is difficult to place any reliance on these ITRs.

8. But, at the same time, it well-settled that income of a student pursuing a professional course must be taken into account to award the loss of dependency.
9. In the case of *Haji Zainullah Khan (Dead) by Lrs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667*, death of a young boy, aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc Ist year (Biology), a compensation of ₹1,46,900/- was increased and rounded off to ₹ 1,50,000/-.
10. In *Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors., MAC APP. 359/2008*, decided by this Court on 23.11.2009, which related to the death of a student (studying medicine) who was doing internship and was to be awarded the MBBS degree in a short time, the Tribunal awarded a compensation of ₹ 9,35,352/- on the basis of the minimum wages of a Graduate. This Court observed that although the deceased was getting a stipend of ₹ 5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between ₹ 16,000/- per month to ₹ 25,000/- per month. Thus, the average monthly income of the deceased was taken as ₹ 18,000/- and after adding 50% towards future prospects, the compensation was enhanced to ₹ 21,36,000/-.
11. In *Ramesh Chand Joshi v. New India Assurance Company MAC APP.212-213/2006* decided on 20.01.2010 this Court took the potential income of a BE (Bio-Technology) First year student of Delhi College of Engineer (DCE) ₹38,333/- per month.

12. In the instant case, the Claimants placed on record a letter Ex.PW3/A to show that he was offered placement on a salary of ₹12,000/- per annum after one year of training. The deceased was not pursuing his Engineering from any renowned institution. In the circumstances, I would take the potential income of an Engineer in the year 2006 who passes out from an ordinary institution to be about ₹15,000/- per month.
13. The deceased was survived by his widowed mother and an unmarried sister. Normally, deduction of 50% is done towards personal and living expenses in case of a bachelor. In *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*, (2009) 6 SCC 121, an exception was carved out for dependents of a bachelor who had a widowed mother and responsibility of younger siblings. Applying *Sarla Verma*, I would make a deduction of 1/3rd towards personal and living expenses as was made by the Claims Tribunal. The loss of dependency thus comes to ₹15,60,000/- (₹15,000/- x 12 x 2/3 x 13).
14. The Claimants would further be entitled to a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and loss of consortium. The overall compensation thus comes to ₹16,05,000/-.

LIABILITY:

15. On the issue of liability, the Claims Tribunal held that the driver (Panna @ Banna) possessed a driving licence for LMV for the period 30.09.1996 to 29.09.2016. It further held that an endorsement to drive a transport vehicle was made there from 03.01.1998 to 02.01.2001 and then from 31.01.2001 to 02.01.2004. The Claims Tribunal, however, took the view

that since the licence was valid upto 29.09.2016, it could not be said that the period of the licence for HTV was only till 02.01.2004.

16. I have before me the Trial Court record which contains a photocopy of the driving licence. A notice Ex.R3W1/D dated 09.05.2006 was served upon the driver as well as owner of the vehicle. The postal receipts were proved as Ex.R3W1/F and the notice sent by UPC was proved Ex.R3W1/G. The driver and the owner, however, did not come forward to produce any other driving licence. In view of the evidence produced by the Appellant Insurance Company as also the driving licence placed on record, Respondent Banna was permitted to drive the transport vehicle firstly from 03.01.1998 to 02.01.2001 and then from 01.01.2001 to 02.01.2004. There is no endorsement to permit the driver to drive a transport vehicle after 2004. As per Section 14(2) of the Motor Vehicles Act, 1988(the Act), a licence for transport vehicle when issued is effective for a period of three years only. Simply because the driver initially possessed a licence for LMV which was valid from 1996 to 2016, would not entitle him to drive a HTV after the endorsement to drive a transport vehicle expired in 2004. Thus, the Appellant Insurance Company has successfully proved the breach of the terms of the policy.
17. Even if the Insurance Company successfully proved the breach of the terms of the policy, its liability to satisfy the award as per third party liability is statutory.
18. 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* 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.....”

19. 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.”

20. 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.”

21. This Court in *Oriental Insurance Company Limited v. Rakesh Kumar and Others*, 2012 ACJ 1268 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*, 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.
22. In the circumstances, the Appellant Insurance Company would be entitled to recover the amount of compensation paid by the Appellant Insurance Company from the Respondents No.3 and 4, that is, driver and the owner of the offending vehicle in execution of this very judgment without having recourse to independent civil proceedings.

23. The excess amount of ₹1,58,334/- along with proportionate interest awarded by the Claims Tribunal shall be refunded to the Appellant Insurance Company.
24. It is stated by the learned counsel for the Claimants that the Appellant Insurance Company has not deposited the principal amount. It is, therefore, directed that the award amount along with interest @ 7.5% per annum as awarded by the Claims Tribunal shall be deposited with UCO Bank, Delhi High Court Branch within six weeks.
25. The award amount shall be disbursed in favour of the Claimants in terms of the orders passed by the Claims Tribunal.
26. Both the Appeals are disposed of in above terms.
27. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
28. Pending Applications are disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 11, 2012

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