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

Date of decision: 10th February, 2015

+ **MAC.APP.142/2015**

HDFC ERGO GEN. INS. CO. LTD. Appellant

Through: Mr. A.K. Soni, Adv.

versus

MS. ANITA KOHLI & ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

CM.APPL.2382/2015 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

MAC.APP.142/2015 and CM APPL.2382/2015 (stay)

1. The instant appeal is directed against the judgment dated 30.10.2014 passed by the Motor Accident Claims Tribunal-2, New Delhi (the Claims Tribunal) whereby compensation of Rs.15,000/- was awarded in favour of Respondent no.1 (the Claimant) for having suffered injuries in a motor vehicular accident which occurred on 03.12.2013 at 9:15 p.m. while Respondent no.1 was riding on a motorcycle bearing

registration no.DL-9SAJ-3625 which was being driven by one Satish Kumar, who also lost his life in that very accident.

2. On appreciation of evidence, it was found that Respondent no.1 was admitted in Safdarjung Hospital where her MLC was prepared. She was discharged on the same day and the injuries suffered were reported to be simple.
3. Respondent no.1 claimed to be working with Joe Nails and earning Rs.15,000/- per month. The Claims Tribunal awarded a compensation of Rs.2,000/- towards purchase of medicines and treatment, Rs.7,000/- on account of loss of income and further compensation of Rs.6,000/- towards pain and suffering, trauma, *etc.* making lump sum compensation of Rs.15,000/-.
4. The award is challenged only on the ground that the Appellant/Insurance Company ought to have been exonerated of its liability as the driver of the offending tempo bearing registration no.DL-1LS-3323 possessed a driving licence only to drive LMV(Non Transport). However, he was found to be driving a commercial vehicle.

5. The Claims Tribunal considered this fact and relying on a judgment of this Court in *Sanjay v. Suresh Chand & Ors.*, FAO 445/2000, decided on 03.08.2012 held that even in the case of conscious and willful breach of the terms and conditions of the insurance policy, the insurer will only be entitled to recovery rights. The Claims Tribunal quoted from *Sanjay v. Suresh Chand & Ors.* as under:-

*“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.*

*20. 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**, the liability of the Insurance Company visàvis 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.”*

6. I am in agreement with the view taken by the Claims Tribunal. On proof of breach of terms and conditions of the insurance policy, the Appellant was only entitled to recovery rights which have been granted.

7. The appeal therefore, is not maintainable the same is dismissed *in limine*.
8. Consequently, CM APPL.2383/2015 is also dismissed.
9. Statutory amount, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

FEBRUARY 10, 2015
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