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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 20th April, 2015

+ MAC.APP. 366/2012

RELIANCE GENERAL INS CO. LTD. Appellant

Through: Mr. K.L. Nandwani, Adv. with
Mr. Manish Kaushik, Adv.

versus

SMT PREM LATA & ORS. Respondents

Through: Mr. Dev P. Bhardwaj, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Reliance General Insurance Company Limited impugns the judgment dated 05.01.2012 whereby compensation of ₹8,83,368/- was granted in favour of Respondents no.1 to 3 for the death of Budhmeshwar Singh, who suffered fatal injuries in a motor vehicular accident which occurred on 01.04.2010.
2. It is urged by the learned counsel for the Appellant that although the Claims Tribunal rightly took minimum wages of an unskilled worker to award loss of dependency but it erred in adding 50% to the same towards inflation which is against the report of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65.*

3. It is further contended that in case of a bachelor, deduction towards personal and living expenses ought to have been 50% instead of 1/3 taken by the Claims Tribunal.
4. It is also urged that in the Claim Petition, the Appellant successfully proved the breach of terms and conditions of the insurance policy, yet the Appellant was made liable to pay the compensation with a right to recover the same from the owner and the driver. It is stated that since the Appellant proved breach of the terms and conditions of the insurance policy, it was liable to be exonerated of its liability.

INCOME & COMPENSATION

5. I have the Trial court record before me. In the Claim Petition filed by Respondents no.1 to 3, it was stated that deceased Budhmeshwar Singh was working on the shop of Surender Kumar Book Mart, Sector 2, Vaishali, Ghaziabad, U.P. and was earning ₹6,000/- per month. However, Respondents no.1 to 3 failed to produce any cogent evidence with regard to the deceased's income. The Claims Tribunal therefore, proceeded to award compensation on the basis of the minimum wages of an unskilled worker.

6. It may be noted that no evidence except for the bald statement of Respondent no.1 that the deceased was earning ₹6,000/- per month

was produced to prove the deceased's income. In view of this, income of ₹6,000/- per month was not established. The Claims Tribunal, therefore, rightly took the minimum wages to compute the loss of dependency.

7. As far as addition towards inflation/future prospects is concerned, the decision in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 with regard to grant of future prospects was approved by three Judge Bench decision in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 and it was laid down that addition towards future prospects is permissible only when there is specific evidence with regard to good future prospects.
8. The question was also dealt with at great length by this Court in *HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalita Devi & Ors.*, MAC. APP. 189/2014 decided on 12.01.2015, wherein after analysing the entire case law including the judgments in *Reshma Kumari (supra)* and *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, it was held that the judgment in *Reshma Kumari (supra)* shall be taken as a binding precedent.
9. Thus, in the absence of any evidence with regard to good future prospects, addition of 50% towards inflation was not permissible.

10. Deceased Budhmeshwar Singh was survived by his widowed mother and two minor siblings. Deduction of 1/3 towards personal and living expenses is hence, in consonance with *Sarla Verma (supra)*. The loss of dependency thus comes to ₹5,48,911/- (5,278/- x 2/3 x 12 x 13).
11. In addition, in view of the three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, Respondents no.1 to 3 are entitled to a sum of ₹1,00,000/- towards loss of love and affection, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss of estate.
12. The overall compensation thus, comes to ₹6,83,911/-
13. The excess amount of ₹ 1,99,457/- along with proportionate interest shall be refunded to the Appellant Insurance Company.
14. The compensation held payable shall be disbursed in favour of Respondents no.1 to 3.

LIABILITY

15. With regard to liability, the Claims Tribunal held that there was willful breach of the terms and conditions of the insurance policy as the driver did not possess a valid driving licence on the date of the accident. That finding has not been challenged by the owner and driver (Respondents

no.4 and 5 herein). It is urged by the learned counsel for the Appellant that since breach on the part of the insured was established, the Appellant should not have been made liable to pay the compensation at all.

16. I am not inclined to agree with the learned counsel for the Appellant.
17. 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 wherein it was held that an exclusion clause in the contract of Insurance must be read down being in conflict with the main statutory provision enacted for protection of the victims of accidents. It was laid down that the victim would be entitled to recover compensation from the insurer irrespective of the breach of any condition of policy. Thereafter the three Judge Bench of the Supreme Court in *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21 analysed 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)* as well as 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 certificate of insurance issued 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.....”

18. 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 decisions 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 Vehicles Act, 1988 the Insurance Company would still

remain liable to the innocent third party but it 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.”

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

emphasised that the liability of the insurer to satisfy the decree passed in favour of the third party was statutory. It approved the decisions in *Sohan Lal Passi (supra)*, *Kamla (supra)* and *Lehru (supra)*. Para 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.”

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 *Malla Prakasarao v. Malla Janaki & Ors.*(2004) 3 SCC 343; *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 on the one hand and *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21; *New India Assurance Co., Shimla v. Kamla and*

Ors., (2001) 4 SCC 342; *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338; *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297; *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 on the other hand and held that in view of the three Judge Bench decisions 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, it would be entitled to recovery rights against the owner or the driver, as the case may be.

21. In this view of the matter, the Appellant Insurance Company was rightly made liable to pay the compensation and to recover the same from the insured. It is therefore, clarified that the Appellant will be entitled to recover the compensation from the insured Respondent no.5 (Arvind Kumar Nagar) in execution of this very judgment without having recourse to independent civil proceedings for recovery.
22. By an order dated 10.04.2012, on deposit of the entire award amount, execution of the award was ordered to be stayed. By a subsequent

order dated 23.11.2012, 75% of the award amount was ordered to be released/held in fixed deposit in terms of the order passed by the Claims Tribunal.

23. While apportioning the compensation, the Claims Tribunal in para 47 of the impugned judgment observed as under:-

“47. Out of this amount 50% is awarded to Smt. Prem Lata mother of deceased and remaining 50% be awarded to petitioner no.2 & 3 in equal proportion. Since the petition no.2 & 3 both are minor, therefore the entire amount of share of petition nos. 2 and 3 be kept in FDR till they attain the age of majority or till five years whichever is later. The 50% of total share of petition no.1 (mother of deceased) be released to her and 50% be kept in FDR for a period of 5 years with release of periodically interest.”

24. It was observed and directed by the Claims Tribunal that 50% of the award amount shall go to Respondent no.1, rest 25% each shall go to Respondents no.2 and 3.
25. The amount shall be released/held in fixed deposit in terms of para 47 of the impugned judgment, which has been extracted above.
26. The appeal is disposed of accordingly.
27. Pending applications also stand disposed of.

28. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

APRIL 20, 2015
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