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

*Decided on: 18th February, 2015*

\+ **MAC.APP. 155/2015**

HDFC ERGO GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. A.K.Soni, Advocate

versus

AISA & ANR. ..... Respondents

Through: Nemo.

\+ **MAC.APP. 157/2015**

HDFC ERGO GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. A.K.Soni, Advocate

versus

MOHD. IZAJUL & ORS. ..... Respondents

Through: Nemo.

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

**J U D G M E N T**

**G. P. MITTAL, J.** **(ORAL)**

**CM.APPL.2715/2015 (Exemption) in MAC APP.155/2015**

**CM.APPL.2738/2015 (Exemption) in MAC APP.157/2015**

Exemption allowed, subject to all just exceptions.

Both the applications stand disposed of.

**<u>MAC.APP.155/2015 & CM.APPL.2716/2015 (stay)</u>**

**<u>MAC.APP.157/2015 & CM.APPL.2739/2015 (stay)</u>**

1. It is urged by Mr. A.K.Soni, learned counsel for the Appellant that since the driver of the vehicle involved in the accident was the owner himself and since he did not possess a valid driving licence at the time of the accident, the Appellant Insurance Company ought not to have been made liable to pay the compensation at all. It is urged that it was the liability of the owner/insured to pay the compensation in such cases.

2. The issue of satisfying third party liability even in case of breach of the terms of insurance policy is settled by three Judge Bench report of the Apex Court in *Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21.* As per Section 149(2) of the Motor Vehicles Act, 1988, (the Act), an insurer is entitled to defend an action on the grounds as mentioned under Section 149(2)(a)(i) and (ii) of the Act. Thus, the onus is on the insurer to prove that there is breach of the terms and conditions of the insurance 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 it 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 also 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 the 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 motor accidents. It was laid down that the victim would be entitled to recover the compensation from the insurer irrespective of the breach of any condition of the insurance policy. The three Judge Bench of the Supreme Court in *Sohan Lal Passi (supra)* analysed the corresponding provisions under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in *Skandia*. Again 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* and 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 from the insured 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.*
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> *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'etre 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………"*

3. Again in United *India Insurance Company Ltd. v. Lehru & Ors., (2003) 3 SCC 338*, in para 18 of the report, the Supreme Court referred to the decisions 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 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………."*

*xxxx xxxx xxxx xxxx xxxx*

*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."*

4. Thereafter 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, 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.*
>
> *xxxx xxxx xxxx xxxx xxxx*
>
> *xxxx xxxx xxxx xxxx xxxx*
>
> *105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle."*

5. This Court also 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 decisions of the Apex Court 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 conscious breach of the

terms of the insurance policy, then it would be entitled only to recovery rights against the owner or driver, as the case may be.

6. Thus, even if the Insurance Company proved that there was willful and conscious breach of the terms and conditions of the insurance policy, it was only entitled to recovery rights which have been granted in the case.

7. The appeals therefore have to fail; the same are dismissed *in limine*.

8. Since both the appeals have been dismissed, the applications for stay do not survive; the same are also dismissed.

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

**(G.P. MITTAL)**
**JUDGE**

**FEBRUARY 18, 2015**
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