

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

Pronounced on: 12th January, 2015

+ MAC.APP. 603/2013

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

..... Appellant

Through Ms. Arpan Wadhawan, Advocate for
Ms. Manjusha Wadhwa, Advocate

versus

SAJJAN LAL & ORS.

..... Respondents

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

G.P. MITTAL, J.

1. This appeal is directed against the judgment dated 01.05.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding the compensation of Rs.36,341/- in favour of Respondent no.1. Sajjan Lal for having suffered injuries in a motor vehicular accident which occurred on 17.07.2009, the Claims Tribunal declined to grant any recovery rights to the Appellant on the ground that since the driver possess a driving licence to drive LMV (Non-Transport), yet by driving a Light Goods Vehicle (LGV) which is also a Light Motor Vehicle (LMV), the insured cannot be said to have breached the terms of the insurance policy.

2. The relevant observations of the Claims Tribunal in para 32 of the judgment are extracted hereunder:-

“32. Respondent no.3 has not proved that holding of driving license by respondent no.1 which did not authorise him to drive a LGV was the factor which contributed to the cause of accident or that the driving license as possessed by respondent no.1 was the fundamental cause of the accident. In the circumstances, I find no force in the contention of respondent no.3 that respondent no.3 is not liable to indemnify the insurer.....”

3. This Court in *Future General India Insurance Company Limited v. Mohd. Ibrahim & Ors.*, MAC APP.837/2011 decided on 09.10.2012 dealt in detail the requirement of holding a licence for the type of vehicle which is involved in the accident and opined that if the driver of the offending vehicle possessed a licence to drive a Non-Transport Vehicle (LMV-NT) and if he is found to be driving a taxi, it will be treated to be breach of the terms and conditions of the policy. In paras 5 to 24 of the report this Court held as under:-

“5. Learned counsel for the First Respondent, however, urges that since the delivery van was LMV, Respondent No.2 was competent to drive the same on the basis of the licence for LMV (NT) possessed by him.

6. Section 10 of the Motor Vehicles Act, 1988 (the Act) deals with the Form and contents of licences to drive. Section 11 of the Act deals with additions to driving licence to drive any other class or description of vehicle in addition to the one which the holder is competent to drive. Section

14 of the Act deals with the currency of licences to drive motor vehicles. Sections 10,11 and 14 of the Act are extracted hereunder:-

“10. Form and contents of licences to drive.

(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motor cycle without gear;*
- (b) motor cycle with gear;*
- (c) invalid carriage;*
- (d) light motor vehicle;*
- 1[(e) transport vehicle;]*
- (i) road-roller;*
- (j) motor vehicle of a specified description.*

11. Additions to driving licence.

(1) Any person holding a driving licence to drive any class or description of motor vehicles, who is not for the time being disqualified for holding or obtaining a driving licence to drive any other class or description of motor vehicles, may apply to the licensing authority having jurisdiction in the area in which he resides or carries on his business in such form and accompanied by such, documents and with such fees as may be prescribed by the Central Government for the addition of such other class or description of motor vehicles to the licence.

(2) Subject to such rules as may be prescribed by the Central Government, the provisions of section 9 shall apply to an application under this section as if the said application was for the grant of a licence under that section to drive the

class or description of motor vehicles which the applicant desires to be added to his licence.

14. Currency of licences to drive motor vehicles.

(1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall, -

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and]

(b) in the case of any other licence, -

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of 3[fifty years] on the date of issue or, as the case may be, renewal thereof, -

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of [fifty years], whichever is earlier;

[(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:]

Provided that every driving licence shall, notwithstanding its expiry under this sub-section continue to be effective for

a period of thirty days from such expiry.”

7. *Thus, from Section 10 of the Act it will be seen that even a learner’s licence has to be in respect of the class of vehicle for which a person wants to have a regular licence. Similarly, Section 11 of the Act lays down that any person holding a driving licence to drive any class of motor vehicle can apply to the Licensing Authority for addition of such other class or description of motor vehicle as he has not been disqualified from holding. Section 14 of the Act lays down that a learner’s licence is effective for a period of six months, a licence to drive a transport vehicle is effective for a period of three years, a licence to drive a transport vehicle carrying hazardous goods will be effective for one year and the other licences would be valid for 20 years from the date of issue/date of renewal or until the person applying for such licence/applying for renewal attains the age of 50 years.*

8. *‘Transport vehicle’ has been defined under Section 2(47) of the Act to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.*

9. *Similarly, ‘Public Service Vehicle’ is defined under Section 2(35) of the Act to mean any motor vehicle used for the carriage of passengers for hire or reward including a maxicab, a motorcab, a contract carriage and a stage carriage.*

10. *Further, ‘Goods Carriage’ is defined under Section 2(14) of the Act to mean any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.*

11. *Similarly, ‘Heavy Goods Vehicle’, ‘Light Motor Vehicle’ and ‘Medium Goods Vehicle’ have been defined under Sections 2(16), 2(21) and 2(23) of the Act respectively, which are extracted hereunder:-*

“2 (16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller

the unladen weight of either of which, exceeds 12,000 kilograms;

2 (21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7500] kilograms;

2 (23) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle."

12. Thus, any transport vehicle or omnibus whose gross vehicle weight or a motor car or a tractor or a road roller, the unladen weight of any of which does not exceed 7500 kgs., is a light motor vehicle.

13. Therefore, it is important to note that a motor car, whose unladen weight does not exceed 7500 kgs., is a light motor vehicle. If that very motor car is used for hire or reward then it becomes a public service vehicle as laid down under Section 2(35) of the Act and a transport vehicle as defined under Section 2(47). Similarly, every goods carriage whether used for public or private purpose would be a transport vehicle.

14. A conjoint reading of Sections 10, 11 and 14 of the Act will show that a person driving a vehicle must possess a licence to drive that class of vehicle which he intends to drive. If he proposes to drive any other vehicle than the one for which he/she possesses any effective driving licence he is to seek an addition to his/her driving licence. In other words, if a person wants to drive only a motor car whose unladen weight does not exceeds 7500 kgs., he needs to have a licence to drive a light motor vehicle only. At the same time, if a person wants to drive a motor car for hire and reward then that light motor vehicle will become a public service vehicle as well and a holder would not be competent to drive the motor car for hire and reward, that is, a maxicab or a motorcab or a taxi unless he possesses a licence to drive a transport vehicle for LMV. Similarly, every goods carriage is included in the definition of transport vehicle. Thus, the holder of a licence must possess

a licence to drive a transport vehicle of the category of the goods vehicle whose gross vehicle weight does not exceed 7500 kgs., then he must possess a licence to drive a light motor vehicle of the category of transport vehicle. If he wants to drive a goods vehicle whose gross vehicle weight is above 7500 kgs. or 12,000 kgs., then he must possess a licence to drive a medium motor vehicle of the category of transport vehicle and heavy motor vehicle of the category of transport vehicle respectively. At the same time, a person possessing a licence to drive a heavy motor vehicle would be competent to drive a medium motor vehicle and light motor vehicle of the category of transport vehicle.

15. A reference may be made to the report of the Supreme Court in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 where the Supreme Court emphasized that the driver must possess the licence for the type of vehicle which is involved in the accident. Para 89 of the report is extracted hereunder:-

“89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the

conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

16. *In Natwar Pariksh & Co. Ltd. v. State of Karnataka & Ors., (2005) 7 SCC 364, a three Judge Bench of the Supreme Court held that even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle the tractor trolley would constitute a goods vehicle under Section 2(14) and would consequently be a transport vehicle under Section 2(47). Para 24 of the report is extracted hereunder:-*

"24. Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under section 2 (46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" under section 2 (28). Similarly, the word "tractor" is defined in section 2 (44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles, etc. A combined reading of the aforestated definitions under section 2, reproduced

hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor-trailer would constitute a "goods carriage" under section 2(14) and consequently, a "transport vehicle" under section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under section 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under section 2(47) of the M.V. Act, 1988."

17. Subsequently, in New India Assurance Company Limited v. Roshanben Rahemansha Fakir & Anr., (2008) 8 SCC 253; the Supreme Court differentiated between a transport vehicle and a non transport vehicle and held that a driver who had a valid licence to drive a Light Motor Vehicle was not authorized to drive a light goods vehicle. It was further held that a person must possess the licence for the class of vehicle involved in the accident.

18. A similar question arose for consideration in National Insurance Company Limited v. Kusum Rai & Ors. (2006) 4 SCC 250; where the driver possessed a licence for driving LMV (NT) and the vehicle driven by him was a taxi which was a commercial vehicle. The Supreme Court held that a taxi (a commercial vehicle) could not be driven on the basis of an LMV (NT) licence. Para 11 of the report is extracted hereunder:-

"11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed

hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence.”

19. *I have before me the testimony of Satish Chander (R3W2), Record Clerk, Licensing Authority as well as the driving licence possessed by the driver. The driving licence was issued on 10.05.2010 and it was valid upto 09.05.2030. I have earlier extracted the provisions of Section 14 of the Act which clearly lays down that a licence to drive a transport vehicle shall be effective for a period of three years only. In the instant case the driving licence as well as R3W2’s testimony clearly indicates that the licence was valid for 20 years. In other words, the licence was only for a non transport vehicle.*

20. *Since the Second Respondent possessed a licence to drive LMV (NT), he was therefore not competent to drive the delivery van No.DL-1LL-7602 involved in the accident. It is no where the case of Respondents No.2 and 3 that the accident was caused on account of some mechanical failure or any other similar cause, having no nexus with the driver not possessing requisite type of licence. Thus, the Insurer is entitled to avoid the liability.*

21. *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.....”

22. 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 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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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.”

23. *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 is statutory. It approved the decision in Sohan Lal Passi, Kamla and Lehu. 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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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.”

24. *This Court in Oriental Insurance Company Limited v. Rakesh Kumar and Others 2012 ACJ 1268 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.”*

4. The instant case is squarely covered by *Future General India Insurance Company Limited v. Mohd. Ibrahim & Ors., MAC*

APP.837/2011 decided on 09.10.2012 by this Court. Consequently, the appeal is liable to be allowed and the Appellant Insurance Company would be entitled to recovery rights in execution of this very judgment without having recourse to the independent recovery proceedings.

5. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 12, 2015
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