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

Decided on: 18th February, 2015

+ **MAC.APP.157/2014**

SHRI BHIM SINGH Appellant
Through: Mr. Vijay Kumar Wadhwa,
Advocate

versus

SHRI RAJIV KUMAR & ANR. Respondents
Through: Ms. Shantha Devi Raman, Adv.
for R-2.

+ **MAC.APP.823/2013**

SMT. SUDESHI WALIA Appellant
Through: Mr. Vijay Kumar Wadhwa,
Advocate

versus

SHRI RAJIV KUMAR & ANR. Respondents
Through: Ms. Shantha Devi Raman, Adv.
for R-2.

+ **MAC.APP.184/2014**

SHRI RAJESH KUMAR WALIA Appellant
Through: Mr. Vijay Kumar Wadhwa,
Advocate

versus

SHRI RAJIV KUMAR & ANR. Respondents
Through: Ms. Shantha Devi Raman, Adv.
for R-2.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellants are aggrieved by the order dated 24.05.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby the Claim Petitions filed by the Appellants were dismissed simply on the ground that the legal representatives of the driver-cum-owner, who was Respondent no.1 before the Claims Tribunal were not impleaded.
2. It is very unfortunate that the Appellants were left remediless in spite of the fact that confirmation had been received from the police authorities that there was no legal heir of the deceased who could have been impleaded. Para 2 of the impugned judgment is extracted hereunder:-

“2. During the course of proceedings, it has come on record that the driver-cum-owner has expired. The fact also got confirmed by police officials and it has reported that there is no legal heirs of deceased. Further from statement of Sh.Rameshwar Sharma UDC from Transport Department, West Zone, Janak Puri, it is evident

that offending vehicle bearing No.DL-4C-U-7425 was sold to one Sh. Sunder Lal S/o Sh.Budha Ram by Rajeev Kumar (driver) on 03.05.2011.”

3. Otherwise also, as per provision of Section 155 of the Motor Vehicles Act, 1988, the cause of action against the owner and the insurer will survive in spite of the death of the owner of the vehicle. Of course, the cause of action against the owner will survive only to the extent of the estate left by him.
4. The question came up for consideration before the Punjab & Haryana High Court in *Natha Singh v. Gurdial Singh & Ors.*, AIR 1982 P&H 38, where while dealing with provision of Section 102 of the Motor Vehicles Act, 1939 which is *pari materia* with the provision of Section 155 of the M.V. Act of 1988, the Punjab and Haryana High Court held as under:-

“3. Section 96 of the Act provides for the duty of the insurers to satisfy judgments against persons insured in respect of third party risks. It also provides that the insurance company or the insurer to whom the notice of the bringing of any such proceedings is given, shall be entitled to be made a party thereto and to defend the action on any of the grounds given therein. Section 102 of the Act provides,—

“Notwithstanding anything contained in Section 306 of the Indian Succession Act, 1925 (XXXIX of 1925),

the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.”

In view of these provisions of the Act, it cannot be said that the insurance company is not liable to satisfy the claim for compensation to be awarded in the claim application simply because the legal representatives of Amrit Lal Gupta insured who died during the pendency of the proceedings, were not brought on the record. It is particularly so because in the insurance policy, Exhibit R-11, it has been provided inter alia vide Cl. (4) of Section II, thereof that the company may, on its own option, undertake the defence of proceedings in any Court of law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under that section. It was because of this term of the policy that the insurance company took a specific plea in paragraph 3 of their additional grounds that it had taken over the defence of the claim petition in the name of the insured to contest the claim, as they had reserved the right under the policy of insurance. As observed earlier, this claim was accepted by the Tribunal and on that account, it was allowed to cross-examine the witnesses, on merits, as well. Under the circumstances, the ratio of the decision in Norati Devi's case, (AIR 1978 Punj & Har 113) (supra), is most relevant. It has been held therein (at p. 114),—

“Section 96 only clarifies that if an award is made, it would be the duty of the insurance company to meet the claim. It nowhere lays down that if the insurance

company is allowed to contest the liability in the absence of the insurer, it should not be held liable. Therefore, it cannot be contended that an insurance company can never be held liable so long as the insured is not impleaded as a party to the proceedings, or having been impleaded his name is ordered to be struck off from the array of the respondents on the basis that he enjoys diplomatic immunity from being sued in a Court.”

In view of the abovesaid decision of this Court, the claim application of Natha Singh, appellant, could not be dismissed on the ground that the legal representatives of Amrit Lal Gupta, deceased, were not brought on the record.”

5. Thus, it is clear that the Claim Petition could have proceeded against Respondent no.2, insurer of the vehicle.
6. The Claims Tribunal appeared to have been swayed by the fact that the driving licence of the driver-cum-owner on verification was found to be fake. The Claims Tribunal opined that in such case, even the Insurance Company will not have any liability. This finding of the Claims Tribunal too cannot be sustained.
7. The issue of satisfying third party liability even in case of breach of the terms of insurance policy is settled by a 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 conditions of the insurance policy. It is well settled that the breach must be conscious and willful. However, even if a conscious breach on the part of the insured is established, still the insurer has a statutory liability to pay 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 great 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 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 conditions of insurance policy. The three Judge Bench of the Supreme Court in *Sohan Lal Passi* 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 if there was any breach of the policy condition on account of the vehicle being driven by a driver 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.....”

8. 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*, *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 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.”

9. 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.

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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.”

10. 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 decisions 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 only be entitled to recovery rights against the owner or driver, as the case may be.

11. Thus, even if the owner has died and the Insurance Company proves willful breach of the conditions of policy, still the Insurance Company cannot avoid its statutory liability irrespective of the fact whether it will/will not be able to recover the compensation paid to the third party from the insured. This question was dealt with by the Supreme Court in para 18 in *United India Insurance Co. Ltd. v. Lehu & Others*, (2003) 3 SCC 338, wherein it was held as under:-

“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. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured.”

12. The appeals, therefore, have to succeed; the same are accordingly allowed.
13. It goes without saying that the Claims Tribunal will be entitled to go into the question whether there was willful and conscious breach of the terms and conditions of the insurance policy on the part of the insured and if it is so found, in view of the observations made above, the Respondent Insurance Company will be entitled to recovery rights so far as the estate of the deceased is concerned.
14. The Insurance Company shall also be at liberty to search for the legal heirs of the owner and if any is found, to implead them.
15. Pending applications also stand disposed of.
16. Parties to appear before the Claims Tribunal on 16.03.2015.

(G.P. MITTAL)
JUDGE

FEBRUARY 18, 2015

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