

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

Judgment Reserved on: September 22, 2015
% *Judgment Delivered on: September 29, 2015*

+ **MAC.APP.1136/2012**

UNITED INDIA INSURANCE CO. LTD. Appellant
Through : Mr.D.D.Singh, Advocate with
Mr.Navdeep Singh, Advocate.

versus

NEERAJ SEHRAWAT & ORS Respondents
Through : None.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. This appeal has been preferred by the appellant – United India Insurance Co. Ltd. impugning the award passed by the Tribunal in claim petition bearing MACT Petition No.23/12/11 whereby recovery rights have been denied to the insurance company while awarding a compensation of ₹77,278/- to the injured/respondent No.1 herein.
2. Notice of the appeal was sent to the respondents. As per the report on the summons issued to the respondents No.2 i.e. driver of the offending vehicle for the date of hearing 20.09.2013, the notice was received by Smt. Sheela Devi, wife of respondent No.2. Notice sent to respondent No.3 i.e. owner of the offending for the date of hearing 19.10.2012 has also been served through

Sh.Anur Kumar Jain, son of respondent No.3 Sh.Abhay Kumar Jain. None had appeared on behalf of the respondents No.2 and 3 despite service who have further been served through publication in newspaper 'The Statesman' on 02.11.2013.

3. I have heard learned counsel for the appellant also carefully gone through the record.

4. Mr.D.D.Singh, learned counsel for the appellant has drawn the attention of this Court to the statement of R2W1 Sh.Anur Kumar Jain who has stated that he checked the driving licence of the driver namely Santosh Kumar which was valid from the month of September, 2010 for a period of three years. R2W1 Sh.Anur Kumar Jain was confronted with the driving licence Ex.PW1/5 as to whether it was the same licence which was shown to him by the driver at the time of seeking employment, the witness failed to recollect the same but claimed that the driving licence was issued from Licensing Authority, Agra.

5. Learned counsel for the appellant has also submitted that notice under Order XII Rule 8 CPC Ex. R3/W1/B was sent to the driver and owner of the offending vehicle i.e. Truck bearing registration No.HR-55A-5361 for production of the original licence of the driver which they failed to do. R3W3 Mr.Raj Kumar from Licensing Authority, Agra as well as R3W2 ASI Bajrang Lal, Investigating Officer of case FIR No.369/2010, PS Dwarka North have also been examined to establish that driving licence No.608/AG/06 is a fake licence.

6. Mr.D.D.Singh, learned counsel for the appellant has submitted that the driving licence Ex.PW1/5 expired in September, 2010. If it was so, then on the date of employment i.e in the first week of October, 2010, R3W1 Sh.Anur

Kumar Jain could not have been shown any driving licence by the driver having validity from September, 2010 to September, 2013. Learned counsel for the appellant has further submitted that as the licence has expired in September, 2010 i.e. prior to October, 2010 when the driver i.e. respondent No.2 was employed by respondent No.3 i.e. the owner of the offending vehicle, the insurance company is entitled to have recovery rights.

7. Before dealing with the contentions raised before this Court by the appellant/insurance company, it is necessary to examine the legal position on the subject.

8. 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.

9. 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 Chandravan*, (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*.

10. In the case reported as *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 Chandravan, (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.....”

11. 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 wilful 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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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.”

12. The accident in this case has taken place on 04.11.2010. The copy of the driving licence Ex.PW1/5 shows its validity from September, 2007 to September, 2010. Thus on the date of employment of respondent No.2, there was no question of the owner seeing the driving licence having validity upto the year 2013. It may be noted here that despite notice under Order XII Rule 8 CPC being served upon the owner and driver of the offending vehicle, they failed to produce the driving licence which had the validity during the period the accident has taken place. It is a case where on the date of employment in October, 2010, respondent No.2- the driver was not holding a valid driving licence as his licence had expired in September, 2010. Thus, the respondent No.3 – the owner, by employing a person who was not holding a valid driving licence, committed willful breach of terms and conditions of the insurance policy. Hence the appellant/insurance company is entitled for recovery rights.

13. Accordingly, recovery rights are given in favour of the appellant and against the respondents No.2 – the driver and respondent No.3 – the owner of the offending vehicle.

14. The Appeal is allowed.

Copy of the order be given dasti to learned counsel for the appellant.

(PRATIBHA RANI)
JUDGE

SEPTEMBER 29, 2015

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