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

Date of decision: 19th February, 2015

+ **MAC.APP. 893/2010**

SEEMA CHHABRA & ORS Appellant
Through: Mr. Amit Kumar Pandey, Adv. with
Mr. Rajeshwar P. Gupta, adv.
versus

RAJ KUMAR & ORS Respondents
Through: Ms. Savita Singh, Adv. for OICL/R-3.
Ms. Neerja Sachdeva, Adv. for
ICICI/R-6.
Mr. S.N.Parashar, Adv. for R-7 & 8.

+ **MAC.APP. 34/2011**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Ms. Savita Singh, Adv.

versus

SEEMA CHHABRA & ORS Respondents
Through: Mr. Amit Kumar Pandey, Adv. with
Mr. Rajeshwar P. Gupta, Adv. for R-1
to R-3.
Mr. S.N. Parashar, Adv. for R-4 & 5.
Ms. Neerja Sachdeva, Adv. for
ICICI/R-10.

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

G. P. MITTAL, J. (ORAL)

1. These two appeals arise out of the judgment dated 26.08.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal)

whereby compensation of ₹48,70,560/- was awarded in favour of the Claimants for the death of Sanjeev Chhabra, who died in a motor vehicular accident which occurred on 19.06.2006 at 07:35 a.m.

2. MAC APP.893/2010 is for enhancement of compensation whereas MAC APP.34/2011 is filed by the Oriental Insurance Company Limited seeking exoneration instead of mere grant of recovery rights, which have been granted in favour of the Insurance Company on proof of breach of the terms and conditions of the insurance policy.
3. For the sake of convenience, Appellants in MAC APP.893/2010 and Respondents no.7 and 8, who are the parents of the deceased Sanjeev Chhabra in MAC Appeal No. 34/2011 shall be referred to as the Claimants, whereas Appellant Oriental Insurance Company Limited in MAC APP.34/2011 and Respondent no.3 in MAC APP.893/2010 shall be referred to as the Insurance Company.
4. During inquiry before the Claims Tribunal, it was established that deceased Sajeew Chhabra was working as Manager (Administration) with M/s. Panaccea Biotech and was getting a salary of ₹38,840/- per month in addition to medical reimbursement of ₹15,000/- per annum. On appreciation of evidence, the Claims Tribunal found that the

accident was caused because of rash and negligent driving of truck bearing registration no.HP-23-1341 which was being driven by Respondent no.1 (Raj Kumar) at the time of the accident. The truck was owned by Respondent no.2 (Rakesh Chopra). The Claims Tribunal accepted the deceased's income, deducted 1/4th towards personal and living expenses and adopted a multiplier of 14 as per the age of the deceased being 41 years. On addition of nominal compensation towards non-pecuniary damages, the overall compensation of ₹48,70,560/- was awarded.

5. The following contentions are raised on behalf of the Claimants:-

- (i) Deceased Sanjeev Chopra was a highly qualified person working on a senior position in a reputed company where he had switched job just a few months prior to the accident. The Claims Tribunal ought to have made addition of 30% towards future prospects; and
- (ii) The compensation awarded towards non-pecuniary damages is on the lower side.

6. On the other hand, the learned counsel for the Insurance Company submits that since breach on the part of the insured was proved, the

Insurance Company was entitled to avoid indemnification and therefore, the Insurance Company was entitled to be completely exonerated. It was the owner (Respondent no.2) who was liable to pay the compensation.

7. First of all, I shall deal with the appeal preferred by the Claimants.
8. I have the Trial Court record before me. Seema Chopra, wife of the deceased swore Affidavit Ex.PW-1/1 and entered the witness box as PW-1. She testified that her husband was a Graduate and PG Diploma holder in Personal Management. She testified about the salary of the deceased and deposed that her late husband was being assessed to income tax. She deposed that her husband had a bright future prospects.
9. The Claimants also examined K.P. Singh Yadav, Executive (Personnel) in the deceased's employer company who proved the appointment letter Ex.PW-4/A and the salary slip Ex.PW-4/B. In cross-examination, he deposed that one Rajeshwar Sharma, another employee, was earlier a Manager and he was promoted as an Assistant General Manager w.e.f. 01.12.2007. He deposed that deceased Sanjeev Chopra would also have risen to the rank of General Manager

with a salary of ₹2,00,000/- per month in due course. The evidence produced by the Claimants with regard to future prospects remained unchallenged and unrebutted. Since there was ample evidence with regard to deceased's future prospects, the Claimants were entitled to addition of 30% towards future prospects.

10. A perusal of the appointment letter shows that the deceased was getting a salary of ₹38,840/- per month which included a sum of ₹10,550/- towards HRA and ₹7190/- towards transport allowance.
11. To my mind, the deceased would have spent only a sum of ₹3190/- in connection with reporting to his work and the rest of the amount of ₹4,000/- of Transport Allowance should be taken towards his income for computation of loss of dependency. There will not be any liability towards income tax on H.R.A. of ₹10,550/- per month and the facilities of LTA and medical reimbursement. In view of this, the loss of dependency comes to ₹58,38,924/- {₹35,650/- x 12 – ₹ 40,360/- (income tax) + 15,000/- + 25,320/- + 30% x 3/4 x 14}.
12. Further, the compensation awarded towards non-pecuniary damages is liable to be enhanced on the basis of *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54. I tend to award a sum of ₹1,00,000/- each

towards loss of love and affection and loss of consortium. The Claimants are further entitled to a sum of ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate.

13. The overall compensation thus, comes to ₹60,73,924/- as against ₹48,70,560/- awarded by the Claims Tribunal.
14. The enhanced compensation of ₹12,03,364/- shall carry interest @ 7.5% per annum from the date of filing the Claim Petition till its payment.

LIABILITY

15. While dealing with the aspect of liability, the Claims Tribunal found that the owner of the offending truck failed to produce the permit despite service of notice under Order XII Rule 6 CPC and thus, it was held that the vehicle was being driven without permit. The Claims Tribunal held that there was breach of the terms and conditions of the insurance policy and while directing Oriental Insurance Company Limited to pay the compensation initially, it was entitled to recover the same from the driver and the owner of the offending vehicle.

16. The owner and driver have not challenged this finding of the Claims Tribunal. They have preferred not to contest these proceedings in spite of service through publication.
17. The question of statutory liability to pay the compensation was 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 victims accident. It was laid down that the victim would be entitled to recover the compensation from the insurer irrespective of breach of any condition of the insurance policy. Again, a three Judge Bench of the Supreme Court in *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21 analyzed the corresponding provisions under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in *Skandia (supra)*. Thereafter, 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)*, and 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 from the insured if there was any breach of the policy condition on account of the vehicle being driven by a person 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 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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.....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. Also, a 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 decision 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* titled *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. Lehru & 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 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 conscious breach of the terms of the insurance policy, it would merely be entitled to recovery rights against the owner or driver, as the case may be.

21. In view of the matter, Oriental Insurance Company Limited, Respondent no.3 in MAC APP.893/2010 and Appellant in MAC

APP.34/2011 shall be liable to pay the compensation awarded by the Claims Tribunal as also the enhanced compensation. It shall however, be entitled to recover the compensation paid from the driver and owner of the offending truck bearing registration no. HP-23-1341, who are Respondents no.1 and 2 in MAC APP.893/2010 and Respondents no.6 and 7 in MAC APP.34/2011.

22. The Oriental Insurance Company Limited is directed to deposit the enhanced compensation along with interest @ 7.5% per annum within six weeks with the Claims Tribunal, failing which the Claimants will be entitled to interest @ 12% per annum from the date of this judgment.
23. The amount deposited shall be released in terms of the order passed by the Claims Tribunal.
24. Out of the enhanced compensation 15% of the compensation along with proportionate interest each shall be payable to Respondents no.7 and 8 (Rajan Kumar and Smt. Bimla Devi), 10% of the enhanced compensation along with proportionate interest each shall be payable to Appellants no.2 and 3 (Baby Paavni and Baby Kaashvi) and the rest 50% of the enhanced compensation along with proportionate interest

shall be payable to Appellant no.1 (Smt. Seema Chhabra), widow of the deceased.

25. 50% of the compensation awarded to Appellants no.2 and 3 and Respondents no.7 and 8 shall be held in fixed deposit for a period of two years. Rest shall be released on deposit.
26. 75% of the compensation awarded to Appellant no.1 (Claimant) shall be held in fixed deposit for a period of two years, four years, six years and eight years respectively in equal proportion and rest 25% shall be released on deposit.
27. Amount awarded by the Claims Tribunal shall be disbursed/held in fixed deposit in terms of the order passed by the Claims Tribunal.
28. Both the appeals are disposed of in above terms.
29. Pending applications, if any, also stand disposed of.
30. Statutory amount, if any, shall be refunded to the Insurance Company.

(G.P. MITTAL)
JUDGE

FEBRUARY 19, 2015

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