



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 17 May 2024**
Judgment pronounced on: 22 July 2024

+ **MAC.APP. 720/2014**

NEW INDIA ASSURANCE COMPANY LTD Appellant
Through: **Mr. Ravinder Singh & Ms. Raveesha Gupta, Advs.**

versus

SAURABH KHANNA & ORS Respondents
Through: **Mr. Shrey Chathly & Ms. Purnima Malik, Advs. for R1.**
Mr. Vishal Chaudhary, Adv. for R2 & R3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/ New India Assurance Company Ltd has preferred the present appeal preferred under Section 173 of the Motor Vehicles Act, 1988¹, assailing the Impugned judgment-cum-award dated 04.06.2014 passed by the learned Motor Accident Claims Tribunal, North-East District, Karkardooma Courts, Delhi² in MACT No. 202/10³, titled as '*Saurabh Khanna Vs. Ashok Kumar & Ors*' primarily on the ground that the compensation awarded to the claimant/injured is on the higher side, arbitrary and not in accordance with settled principles of law; and also challenging the non grant of

¹ MV Act

² Learned Tribunal/ MACT

³ Claim Petition



recovery rights as regards the compensation payable, *vis-a-vis* from the driver and registered owner of the offending/insured vehicle.

FACTUAL BACKGROUND:

2. Briefly stated, the claimant/injured (Respondent No.1 herein) met with a motor accident at about 8pm on 14.05.2010 in Jawahar Nagar, Loni Road, when the left-back side of a bus bearing no. DL 1PA 5421 (offending vehicle/bus) hit the motorcycle of the claimant/injured and the left-back wheel of the offending vehicle crushed the right thigh of the claimant/injured and caused other grievous injuries as well. Consequently, on 14.07.2010, the claimant/injured filed a claim petition under Section 166 and 140 of MV Act, bearing MACT No. 202/2010 before the learned MACT seeking compensation from the owner and driver of the offending bus for the injuries caused to him in the motor accident dated 14.05.2010 and impleaded the insurer (appellant herein) of the offending bus as well.

PROCEEDINGS BEFORE THE LEARNED MACT AND IMPUGNED AWARD DATED 04.06.2014:

3. Mr. Ashok Kumar/driver⁴ (Respondent No. 2 herein) and Mr. Satish Pal/owner⁵ (Respondent No. 8 herein) of the offending bus were proceeded ex parte vide order dated 25.08.2011 passed by the Learned Tribunal.

⁴ Section 2(9) of MV Act: “driver” includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;

⁵ Section 2(30) of MV Act: “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;



4. The insurance company (appellant herein) filed a written statement wherein it admitted that the offending bus was insured with it at the time of the accident. However, the case set up by the appellant/insurance was that the permit issued to the offending vehicle/bus by the RTO, Ghaziabad, U.P. did not allow for plying it in the Delhi jurisdiction, hence, as per the terms of the insurance policy, the appellant/insurance company is not liable to pay compensation to the claimant/injured in the event of the violation of a permit clause by the driver/owner of the offending vehicle.

5. Based on the pleadings, the following issues were framed by the learned tribunal:

- i. Whether the petitioner Saurabh Khanna son of Sh. Vinod Kumar sustained injuries in motor accident caused by rash and negligent driving of vehicle i.e. private bus bearing registration no, DL IPA 5421 by respondent no. 1 on 14.05.2010 at about 8.50 pm at Jawahar Nagar, Loni Road, Delhi, within the jurisdiction of police station Karawal Nagar?
- ii. Whether the petitioner is entitled to any compensation. If so, to what extent and from which of the respondents?
- iii. Relief.

6. As regards the Issue No.1, relying upon the clear and consistent testimony of the claimant/injured as well as the criminal case record pertaining to the motor accident in question, including but not limited to the FIR, Recovery memo, and Mechanical Inspection Report of the vehicle, the learned Tribunal held that the claimant had satisfactorily proved that the accident in question had in fact occurred due to the involvement of the offending vehicle/bus and the rash and negligent manner in which it was being driven by its driver. Accordingly, the



learned Tribunal decided the said issue in the affirmative. This finding is not assailed by the appellant insurance company.

7. As regards the Issue No.2 *qua* the quantum of compensation, the learned Tribunal after giving detailed reasons, computed the compensation amount payable to the claimant tabulated as under:

S. No.	Head of Compensation	Amount
1.	Pain and suffering	Rs.50,000/-
2.	Special diet	Rs. 6,000/-
3.	Conveyance	Rs. 6,000/-
4.	Attendant charges	Rs. 15,000/-
5.	Loss of income during treatment	Rs. 58,650/- (11,730/- x 5 months)
6.	Medical Bills	Rs. 2,39,205/-
7.	Cost of Future Treatment	Rs. 4,40,000/-
8.	Loss of income during the period of future treatment	Rs. 70,380/- (11,730/- x 6 months)
	Total Compensation	Rs. 8,85,235/-

8. Thus, the learned Tribunal held the total compensation amount payable to the claimant/injured to be Rs. 8,85,235/- along with interest @ 9% per annum from the date of filing of the claim petition i.e. 14.07.2010 till realisation.

9. With regard to liability to pay compensation, the learned Tribunal observed that the alleged deviations in the permit to ply the offending vehicle/bus in Delhi are not sufficient to exonerate the appellant/insurance company from liability to pay the claimant. Accordingly, the learned tribunal did not grant recovery rights to the appellant/insurance company.

GROUND OF APPEAL:

10. The impugned judgment-cum-award has been assailed by the appellant/insurance company on the following grounds: -



- a) That the Ld. Tribunal acted erred in granting compensation towards “period of future treatment” without considering that the claimant/injured has admittedly not undergone any surgical future treatment since 16.10.2010 i.e. the day on which an estimate of expenses for such treatment was submitted by the claimant, which is Ex. PW 1/C.
- b) That the Id. Tribunal erred in not granting recovery rights to the appellant/insurance company in view of the fact that the offending vehicle/bus was being driven without a permit.
- c) That the Id. Tribunal failed to consider that the Supreme Court in the case of “*Ashwani Kumar v. Oriental Insurance Company*” has held that in the absence of a valid permit to use the offending vehicle as a “goods vehicle”, the insurance company is entitled to raise the statutory defence under Section 149(2) of the MV Act.

11. The respondents No.2 and 3 herein i.e. the driver and owner of the offending vehicle/bus entered appearance upon notice of the present appeal and filed a common reply to the effect that the offending bus was driven to a workshop in Delhi on the date of the accident to get some repair work done in its engine, which could not be carried out in the area of Ghaziabad, UP where the offending vehicle was issued a permit to ply.

ANALYSIS & DECISION:

12. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar. I have also perused the relevant records of the case including the digitized Trial Court Record.

QUANTUM OF COMPENSATION:

13. Insofar as the challenge to the quantum of compensation by the appellant/insurance company is concerned, it would be apposite to reproduce the findings recorded by the learned Tribunal while



appreciating evidence on the record and assessing compensation under different heads:

“16. PW 2 Sh. K. D. Sharma, Record Clerk, Maharaja Aggarsen Hospital, Punjabi Bagh as PW 2 proved the discharge summary and final bill of patient namely Saurav Khanna, and deposed that he was admitted on 05.08.2010. It is further deposed that the net amount was charged by the hospital. It is further deposed that the summary of medical bills as produced by the petitioner amounting to Rs. 2,39,205/- includes the bill amounting to Rs. 27,828/- which is mentioned at serial no. 88 of the consolidated bill. It is further deposed that the witness did not have any personal knowledge about the prescription given by the concerned doctor to purchase the medicines as supported by the medical bills.

17. Dr. Manoj Bansal, Consultant Plastic Surgeon PW 3, deposed that patient Saurav Khanna was admitted in Pushpanjali Medical Center under him from 15.05.2010 to 21.05.2010 and the discharge summary of the patient is Ex. PW 1/D. It is further deposed that thereafter the patient came to Pushpanjali as OPD patient for his follow up treatment. It is further deposed that Ex. PW 1/C is the future expenses prepared by him for surgery including implants, investigations, medicines and hospital stay if there would be no other complication. It is further deposed that the said estimate was given by him on 16.10.2010. It is further deposed that as on date there would be 10% more expenses as stated by him in Ex. PW 1/C and also the patient would require 6-8 months rest besides hospital admission for his surgery as well as post operative care and after the surgery the patient may suffer scars only. During cross examination he deposed that due to the injuries, the patient will suffer in his physical abilities to perform his duties. It is further deposed that in his opinion, due to skin graft the patient will be uncomfortable to do the office job. It is further deposed that approximately Rs. 1.5 lacs would be spent on implants, about Rs. 1.5 lacs for the surgery and remaining Rs. 1lac for other expenses. It is further deposed that it is impossible to tell the exact period of hospitalization for this purpose. It is further deposed that after completing the plastic surgery- the patient would be fit to do the continuous 8 hours work and after examining Sh. Saurav Khanna he had given this opinion. As per PW 1/C, the total expenses of surgery would be 4 lacs. The witness also said that the estimate was given on 16.10.2010 and the witness was examined on 25.08.2011, when there would be 10% increase in the cost and thus, total cost would be Rs. 4,40,000/-.



18. Perusal of the medical record of the injured shows that he has suffered multiple fracture on his right pelvis and removal of skin from right thigh and lower abdomen, and various other injuries on all over his body. He must have gone to the hospital for his regular follow up check ups and therefore, he must have incurred some expenditure on the conveyance. Petitioner has stated that he incurred and spent Rs. 4,00,000/- for his treatment. However, medical bills of Rs. 2,39,205/- has been filed in support of his claim.

19. Petitioner has stated that he was doing a private job and earning Rs. 11,730/- per month as per Ex. PW 1/E salary statement. He has stated in his affidavit that he could not work for five months as he had received grievous injuries.

20. Keeping in view the nature of injuries suffered by the Claimant and the fact that he was under treatment, he needed an Attendant to look after him and the claimant is therefore, entitled to attendant charges. Petitioner has not filed any record to show that he has received help of special attendant however, some family member must have been attending him. In Delhi Transport Corporation and Am. v. Lalita AIR 1981 Delhi.558, a Division Bench of this Court held that a victim cannot be deprived of compensation towards gratuitous services rendered by some of the family members, for the benefit of the tortfeasor. In the circumstances, where the injured had suffered multiple fracture on his right pelvis and removal of skin from right thigh, and lower abdomen, it is deemed fit that a lump sum of Rs. 15,000/- be awarded as compensation towards Attendant charges. Petitioner has not shown anything for spending money on special diet and conveyance but he must have gone for follow up check ups and must have been given special diet for speedy recovery.

22. Cost of future treatment as per Ex. PW 1/C Rs. 4,40,000/-. Loss of Income during the period of future treatment Rs. 11,730 X6=Rs. 70,380/-. Thus, the total compensation amount is Rs. 8,85,235/-."

14. On a careful perusal of the evidence placed on the record, it is evident that the claimant/injured was about 23 years of age when he sustained grievous injuries in the accident. The testimony of PW-3 Dr. Manoj Bansal *vis-a-vis* documents pertaining to the medical treatment of the claimant/injured placed and proven on the record, it would show that he had sustained injuries in the nature of *crush avulsion*



injuries on the right side of his trunk i.e. penile injuries besides injuries on right thigh which led to severe complications including hindered passage of the urine, septic conditions as well as eventual requirement of plastic surgery. Therefore, the testimony of PW-3 that such injuries will require continuous medical treatment in future and the estimates that were given in that regard appear to be fair and not assailable. There is nothing to suggest that the amount of future treatment as deposed by the Doctor is arbitrary or imaginary in any manner, particularly when no cross-examination of PW-3 has been carried out on such aspects.

15. Unhesitatingly, the learned Tribunal has not considered awarding any compensation to the claimant/injured towards loss of enjoyment of amenities and considering that the claimant/injured was unable to work for gain for about five months, it would be just and fair to award Rs. 75,000/- to the claimant/injured for loss of enjoyment of amenities of life. Learned Tribunal has awarded Rs. 50,000/- towards pain and suffering, which also should be enhanced to Rs. 75,000/-. It is but obvious that during such long period of medical treatment, the claimant/injured must have required special diet and must have spent an amount towards conveyance and also towards an attendant. The award of Rs. 6,000/- each towards special diet as well as conveyance by the learned Tribunal does not seem to be just and fair and the same is enhanced to Rs. 15,000/- each. No further interference is called for in the grant of compensation with regard to other pecuniary and non-pecuniary as under:-

S. No.	Head of Compensation	Amount
--------	----------------------	--------



1.	Pain and suffering	Rs.75,000/-
2.	Loss of enjoyment of amenities of life	Rs.75,000/-
2.	Special diet	Rs.15,000/-
3.	Conveyance	Rs. 15,000/-
4.	Attendant charges	Rs. 15,000/-
5.	Loss of income during treatment	Rs. 58,650/-(11,730/- x 5 months)
6.	Medical Bills	Rs. 2,39,205/-
7.	Cost of Future Treatment	Rs. 4,40,000/-
8.	Loss of income during the period of future treatment	Rs. 70,380/- (11,730/- x 6 months)
	Total Compensation	Rs. 10,03,235/-

16. Accordingly, the appeal of the appellant/insurance company challenging the quantum of compensation has no merits.

RECOVERY RIGHTS:

17. Insofar as the recovery rights are concerned, it would again be relevant to reproduce the findings recorded by the learned Tribunal while considering the said aspect of law, which go as under:-

“23. Liability.

Sh. Manoj Maheshwari, Sr. Clerk, Licensing Authority is examined as R3W2, who deposed that the vehicle no. DL IPA 5421 was subsequently transferred as vehicle as UP 14BT 5647 which was plying in the route Murad Nagar, Ravali and Surana with effect from 29.11.2006 to 28.11.2011. The report is Ex. R3W2/A and no permit was issued by the authority for Delhi Jurisdiction. He also filed the report Ex. R3W2/B and report Ex. R3W2/C and as per the permit the vehicle could not ply in Delhi. During cross examination he deposed that vehicle bearing no. DL IPA 5421 was registered at Ghaziabad Authority vide vehicle no. UP 14BT 5647 on 18.06.2010.

Sh. S. C. Mahajan, AO R3W3 proved the certified true copy of policy no. 32350031090100200166 effective from the period 03.10.2009 to 02.10.2010 issued in favour of Satish Pal. It is further deposed that vehicle no. DL 01PA 5421 which is Ex. R3W3/A and as per policy insurance company is not liable to pay compensation under the said case due to violation of permit clause. He had also brought the verification report of Registration



Certificate in respect of DL IPA 5421 as confirmed by the investigator report that the said vehicle was registered as DL IPA 5421 as on 14.05.2010 but the said registration number was changed to UP 14 BT 5647 w. e. f 18.10.2010 by RTA Ghaziabad which is Ex. R3W3/B.

Sh. Suresh Rawat, Sr. Clerk, RTO Office, Ghaziabad, UP is examined as R3W4, who brought the permit register maintained by RTO Office, Ghaziabad, UP and the said register contains details of permit issued to vehicle no. UP 14 R 2788 model no. 1997 vide permit no. 4187.

Ld. counsel for the insurance company has argued that the offending vehicle did not had permit to ply in Delhi and therefore, there was a breach of the condition of the policy and therefore, insurance company is not liable to pay any amount. However, in **City Water Supplier Vs. The New India Assurance Co. Ltd. Mac. App. 708/2012** decided on 12.02.2014 by Hon'ble High Court of Delhi, similar issue was raised and it was held that the alleged deviations in the permit are not sufficient to exonerate the insurance company from the liability. It is further held that non-permit to ply the vehicle in Delhi cannot be the basis for grant of recovery rights because the said failure is not fundamental in nature.

Respondent no.3 is the insurance company which admittedly has issued a valid insurance policy of the offending vehicle. Respondent no.3 being insurance company in its written statement has admitted that there is valid insurance policy issued for the period 03.10.2009 to 02.10.2010. There is no evidence on behalf of respondent no.3 to show that there was any violation of the rules and terms of policy as per Section 149 M. V. Act by the respondents no.1 & 2. Hence, I am of the opinion that respondent no.3 being insurance company is liable to pay the compensation on behalf of respondents no.1 & 2."

18. In view of the above, learned counsel for the respondents No. 2 and 3 i.e., the driver and registered owner of the offending vehicle respectively, has urged that there was no violation of the terms and conditions of the policy and for the first time, they plead in the present appeal proceedings that the offending vehicle was being driven to a workshop in Delhi on the very date of accident to carry out some



repairs in its engine. The digitized Trial Court record shows that respondents No. 2 and 3 did not contest the claim and elected not to cross examine the witnesses for the appellant/insurance company.

19. In the case of **City Water Supplier v. The New India Assurance Company Limited**⁶ the offending vehicle was having permit to be plied only within the State of Haryana and since the accident evidently occurred within the territorial jurisdiction of Delhi, the Insurance Company was granted recovery rights with respect to compensation payable to the claimants. This Court held that in view of decision in the case of **National Insurance Company Limited v. Sohan Lal**⁷ by the Supreme Court, the plying of the offending vehicle in Delhi in violation of the permit condition, could not amount to fundamental breach of the terms and conditions of the policy of insurance. In another case titled **Saket Education Society v. ICICI Lombard General Insurance Company Limited Motor**⁸ the offending vehicle was a school bus which was being plied in Delhi at the time of accident in violation of its permit condition, that restricted its running to the territorial limits of the State of Uttar Pradesh. However, it was found that the school bus had come to Delhi in order to fuel it with CNG gas which was not available at the CNG pumps at Ghaziabad, Uttar Pradesh. Again, relying on the decision in **Sohan Lal (supra)**⁹ it was held that there was no violation of permit conditions.

⁶ 2014 SCC OnLine Del 662

⁷ 2004(3) SCC 297

⁸ 2015 SCC OnLine Del 12218

⁹ 106. The summary of our findings to the various issues as raised in these petitions are as follows:



(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Subsection (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time, (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and Se award made thereon is enforceable and executable in the same



20. Reverting back to the instant matter, evidently the accident occurred at Jawahar Nagar, Loni Road, which leads to Gulab Vatika that is in close proximity to the Delhi-Loni Ghaziabad Border, and the plea of the owner of the offending vehicle on affidavit is that at the time of accident in question, the offending bus was being driven out of Delhi after repairs to the engine. The appellant insurance company has been quite evasive about admitting that at the time of accident, there were no passengers in the bus.

21. Thus, in view of the aforesaid cited cases, this Court has no option but to hold that the appellant/insurance company is failing to show if respondents No. 2 and 3 were guilty of breach of the fundamental terms and conditions of the policy of insurance. Accordingly, the present appeal filed by the appellant/insurance

manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

- (x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Subsection (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.
- (xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.'



company is hereby dismissed. The compensation awarded to the claimant/injured as per the learned Tribunal, if already not released, be released along with the enhanced compensation to the claimant/injured with interest @ 7.5% per annum from the date of filing of the petition before the learned Tribunal i.e. 14.07.2010 till realization, within four weeks from today, failing which the appellant/insurance company shall be liable to pay penal interest @ 12% per annum.

22. The present appeal instituted by the appellant insurance company stands disposed of accordingly.

DHARMESH SHARMA, J.

JULY 22, 2024

Sadiq