



2024:DHC:5822



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

% **Date of order: 2nd August, 2024**

+ **MAC.APP. 116/2016 & CM APPL. 8889/2019**

NARENDER MOHAN PAL & ANRAppellants

Through: Mr. Hargovind Jha, Mr. Sunil
K. Vayakkal and Mr. Ahwan
Mohapatra, Advocates

versus

NATIONAL INSURANCE CO LTD & ORSRespondents

Through: Mr. Amit Kumar Singh, Ms. K. Enatoli
Sema, Ms. Chubalemla Chang and
Mr. Prang Newmai, Advocates
Mr. Anshuman Bal and Ms. Divya
Saini, Advocates for R-2 to 6

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present appeal arises out of the award passed by the learned Tribunal in a petition/case bearing no. 526/14 filed by the legal heirs of the deceased late Sh. Raju ('the deceased' hereinafter) for compensation.
2. The brief facts of the matter are as under:
 - i) The appellant in the instant case is the owner of the offending vehicle and the respondent company is the insurer of the said vehicle. On 3rd August, 2014 at about 11:00 PM, the deceased was



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changing tyres of vehicle bearing no. HR-38P-8352 at RTR flyover, Vasant Vihar, New Delhi and was hit by an Indica car bearing no. HR-99SX(T)-8869 leading to his death.

ii) Thereafter, an FIR bearing no. 455/2014 was lodged under Sections 279/337 of the Indian Penal Code, 1860 at PS Delhi Cantonment.

iii) Subsequently, the legal heirs of the deceased filed a petition/case bearing no. 526/14 before the learned Motor Accident Claims Tribunal. Pursuant to completion of the proceedings, the learned Tribunal passed the award dated 12th August, 2015 ('impugned award' hereinafter), thereby, awarding Rs. 18,77,000/- to the legal heirs of the deceased.

iv) In the said impugned award, the learned Tribunal also held that the vehicle was being used without obtaining the requisite permit for commercial use and therefore, the insurance company was legally entitled to recover the amount from the owner/driver of the offending vehicle. Aggrieved by the same, the owner of the offending vehicle, i.e., appellant herein has filed the instant appeal seeking setting aside of the impugned award.

3. Learned counsel appearing on behalf of the appellant submitted that the learned Tribunal erred in holding that the owner did not have the valid permit to drive the vehicle for commercial purpose whereas, the said vehicle was clearly not being used for commercial purpose at the relevant time.



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4. It is submitted that the position of law as relied upon by the learned Tribunal only applies when the insurance company can successfully prove conscious breach on part of the appellant and in absence of the same, the learned Tribunal ought to have not shifted the burden to the appellant herein.

5. It is submitted that the learned Tribunal erred in holding that there was conscious breach of the insurance policy, whereas the material evidence, i.e. testimony of the driver (respondent no.2 before the Tribunal) clearly depicts that the offending vehicle was used for the purpose of going to the temple for personal visit.

6. It is submitted that the appellant had applied for the valid permit on 1st August, 2014, however, received the same on 8th August, 2014. It is submitted that during the intervening period of five days before the grant of requisite permit, the vehicle was never used in commercial capacity, rather, the driver was going to the temple when the accident occurred.

7. It is submitted that the learned Tribunal erred in holding the owner of the offending vehicle to be liable to pay the compensation as the owner had duly taken all the necessary precautions, i.e. applying for permit and did not use the vehicle for commercial purpose.

8. Therefore, in view of the foregoing submissions, the learned counsel appearing on behalf of the appellant submitted that the present petition be allowed and reliefs be granted as prayed.

9. *Per Contra*, the learned counsel appearing on behalf of the insurance company vehemently opposed the instant appeal submitting to the effect that at the time of accident, the owner did not have a valid permit to run the



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vehicle and therefore, the same constituted a conscious breach of the terms and conditions of the policy.

10. It is submitted that the relevant evidence, i.e. the permit and authorization certificates show the validity from 8th August, 2014 - 7th August, 2019, and therefore, in absence of such permission, the owner would be liable to pay the compensation as per the policy of the respondent insurance company and the same has been rightly concluded by the learned Tribunal.

11. It is also submitted that the learned Tribunal rightly held the owner to be liable as the absence of a valid permit amounts to breach of the terms of policy and therefore, the insurance company cannot be directed to pay for wrongs of the owner.

12. It is submitted that the settled position of law requires the offender to pay for the compensation if there is a conscious breach from the terms of the policy and since the offending vehicle was being used without obtaining the valid permit, the same amounts to conscious breach of the policy.

13. Therefore, in view of the foregoing submissions, the learned counsel for the insurance company submitted that the instant appeal may be dismissed.

14. Heard the learned counsel for the parties and perused the record.

15. The appeal is admitted.

16. It is the case of the appellant that the learned Tribunal wrongly directed the insurance company to recover the money from him, as even though the vehicle did not have a valid permit at the time of accident, the



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appellant had taken all precautionary measures to get the license issued. It is also contended that at the time of the accident, the driver of the vehicle was going to the temple, an activity outside the ambit of commercial use and therefore, even if the vehicle did not have a commercial permit, the same was not used for the said purposes.

17. In rival submissions, the learned counsel for the respondent insurance Company rebutted the aforesaid arguments by stating that running a commercial vehicle without valid permit is a conscious breach of the terms of the policy and therefore, the insurance company is eligible to recover the compensation amount from the owner of the vehicle. The learned counsel for the respondent Company also submitted that learned Tribunal had duly appreciated the settled position of law and therefore, the impugned award does not suffer from any error.

18. Therefore, the limited question for adjudication before this Court is whether the learned Tribunal rightly adjudicated the issue and therefore, if the impugned award is legally tenable *qua* the finding that the insurance company is entitled to recover the compensation amount from the appellant as the appellant did not hold the valid permit to use a commercial vehicle at the time of the accident.

19. The findings of the learned Tribunal with regard to issue in question before this Court is as under:

“31. The respondent No.1 is the driver, the respondent No.2 is the owner and the respondent No.3 is the insurer of the offending vehicle. It was sought to be contended on behalf of the respondent No.3 that the registration number of the offending' vehicle was stated differently.



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During cross examination by the learned counsel for the insurance company RIW1 stated that HR-99-SX(T)8869 was a temporary number and UP16CT2417 was his permanent registration number. The respondent No.2 had placed on record a copy of the Form of Certificate of Registration in respect of the offending vehicle which shows that the permanent registration number was UP-16CT2417 and it was registered a day before the accident. There is even nothing to dispute the same. The respondent No.2 had also placed on record copy of the certificate of fitness in respect of the offending vehicle. It was also sought to be contended on behalf of the respondent No.3 that the respondent No.1 was not in possession of a valid license on the date of the accident. In support of its case the respondent No.3 had examined R3W1 who stated that the driver who was driving the offending vehicle No.HR-99SX(T)8869 at the time of the accident was not holding a valid and effective driving license for driving the vehicle on the road at the time of the alleged accident as per the document given by the 10 with the DAR to the insurance company. She stated that the driver of the offending vehicle had filed another driving license later on during the court proceedings which was in violation of the provisions of M.V.Act.

32. During cross-examination by the learned counsel for the insurance company RIW1 stated that the driver namely Narinder was working with him since September, 2013 till date. He denied the suggestion that on the day of the accident, the driver had a license only to drive a motorcycle and not to drive a four wheeler. He denied the suggestion that the license which had been handed over in the Court was got prepared by him subsequently, Thus, RIW1 denied the suggestion that the license which had been handed over in the Court was got prepared by him subsequently. The license which was filed with the DAR shows that the same was valid only for motorcycle without gear and motorcycle .with gear and light motor vehicle and it was valid from 20.10.2012 to 19.10.2032. No doubt one is not entitled to have more than one license as per the law. However a second license of the respondent No. 1 was placed on record by the respondents No.1 and 2 and a perusal of the said license shows that the same was issued on 31.12.2010 and was valid for a transport vehicle w.e.f. 7.3.2012 till



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6.3.2015. The respondent No.2 had also placed on record the verification report of the said DL which is Ex.R1W1/2 and there is nothing to dispute the same. As such the respondent No.1 was in possession of a valid DL to drive a transport vehicle on the date of the accident.

33. It is then the contention of the respondent No.3 that the respondent No.2 was not holding a valid and effective permit on the date of the accident which amounted to fundamental breach of condition of policy and as such the insurance company was not liable to pay the compensation. In Support of its case the respondent No.3 had produced R3W1 in the witness box who deposed that at the time of the accident there was no permit at all in Existence for driving the commercial vehicle bearing No.HR-99SX(T)8869 either with the driver driving the vehicle or with the owner. She stated that the vehicle bearing No.HR-99SX.(T)8869 was used for commercial purposes as per the DAR but the IO of the case had not submitted the permit of the offending vehicle at the time of the accident as well as he did not inquire/ verify the same. She stated that the respondent No.3 had sent a legal notice under order 12 rule 8 CPC to the owner and driver through its lawyer for demanding the necessary documents through registered AD. She stated that the respondent No.3 had no liability to pay the compensation to the complainant. Copy of legal notice under order XII Rule 8 of CPC is Ex.R3W1/3 and postal receipt is Ex.R3W1/4. During cross-examination by the learned counsel for the respondents No.1 and 2 R3W1 admitted that written statement on behalf of the owner and driver with copy of the permit had already been supplied to the insurance company. The same is Ex.R3W1/DA. Thus R3W1 admitted that written statement on behalf of the owner and driver with copy of the permit had already been supplied to the insurance company and a perusal of the record shows that a copy of the permit in respect of the offending vehicle was placed on record. However a perusal of the said permit Ex.R3W1/DA shows that it was valid from 8.8.2014 to 7.8.2019 and even the Authorisation Certificate of tourist Permit shows that it was valid-from 8.8.2014 to 7.8.2015. As such the said permit was not valid on the date of the accident i.e. 3.8.2014 and no evidence has been



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brought on record to show that there was any valid permit for the offending vehicle on the date of the accident i.e. 3.8.2014.

34. Non-production of permit to run a commercial vehicle is a defence legally available to the insurance company under Section 149 of the Act. In **New India Assurance Co. Ltd. v. Asha Rani and Ors.** (2003) 2 SCC 223 and **National Insurance Co. Ltd., Chandigarh v. Nicolletta Rohtagi and Ors.** (2002) 7 S0C 456 the scope of Sections 149(2) and 149(7) of the Act explained and it was observed that an insurer could avoid its liability only in accordance With what had been provided for in sub-section (2) of Section 149 of the Act. The Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Chella Bharathamma &Ors.** (2004) 8 SCC 517 considered the aforesaid two judgments and it was held:

"High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.

The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing



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Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

*In the present case, since the driver and owner of the offending vehicle have failed to produce a permit valid on the date of the accident, an adverse inference is liable to be drawn against them. Further the Hon'ble High Court of Delhi in MAC.APP.1008/2011 **Reliance General Insurance Co. Ltd. v. Nawab Jan & Ors.** decided on, 27.3.2014 where the witness of the insurance company had proved that the notice under Order 12 rule 8 CPC was served upon the owner by which he was asked to produce the permit of the offending vehicle in the court but he failed to do so and was proceeded ex-parte it was observed:*

"6. The factum of the notice has been proved by the appellant. Therefore, there is nothing on record whether the offending vehicle was having valid permit at the time of accident or not. In such eventuality, adverse inference had to be drawn against the owner of the offending vehicle. However, Ld. Tribunal failed to do so.

7. In view of the aforementioned facts, I am of the considered opinion that Ld. Tribunal has wrongly held that the breach of terms of the policy has not been established. Therefore, appellant is at liberty to recover the amount from respondent no.7, i.e. the owner of the offending vehicle."

In the instant case as well there is nothing to show that the respondent No.2 had a valid permit at the time of the accident, as such adverse inference is liable to be drawn against him.

35. It is settled law that the insurance company has to establish that there was a conscious breach of the terms and conditions of the policy. In the instant case the respondent No.2 had appeared in the witness box but he did not depose specifically that he had a permit valid on the date of the accident is now well settled that in such cases the insurance



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company would first have to satisfy the liability towards third party though it may subsequently recover the amount from the insured. The issue" was considered at length by the Hon'ble High Court of Delhi in **Sanjay v. Suresh Chand & Ors.** F.A.O. No. 445/2000 decided on 3.8.2012 and it was observed:

*"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 faction 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 wilful. 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 Lai 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*



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the decision of the two Judge Bench in Skandia, the three Judge Bench decision in Sohan Lai Pass! and held that the insurer who has been made liable to pay the compensation to third parties on account of issuance of certificate ipf 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

*This Court in MAC APR No.329/2010 **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 **Nationat Insurance Company Limited v. Kusum Rai & Ors.**, (2006) 4 SCC 250, **National Insurance Company Limited v. Vidhyadhar Maliariwala & 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 Lai Passi (supra) and Swaran Singh, the liability of the Insurance Company vis-a-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."*

Thus if the insurance company proves conscious breach of the terms of the policy, it would be entitled to recovery rights. In the instant case the insurance company has succeeded in discharging the onus in this regard and it stands established that the respondent No.2 was not holding a valid permit on the date of the accident and the respondent No.2 has not been able to rebut the same.

36. *In view of the settled law the insurance company Is liable qua third party though it shall be vested with the right to recover the amount of liability from the insured after depositing the compensation awarded*



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to the third party. Since the respondent No.2 did not produce a valid - permit the respondent No.3 shall have the right to recover the amount of compensation from the respondent No.2 who is the owner of the offending vehicle and the insured. Accordingly the respondent No.3 shall deposit the amount of compensation for which the respondent No.2 would be liable and after depositing the same' shall have the right to recover the same from the respondent No.2. The respondent No.3 being the insurer in respect of the offending truck is directed to deposit the award amount in the bank account of the claimants in UCO Bank, Patiala House Court, New Delhi within 30 days of the passing of the award with interest at the rate of 3% from the date of filing of the claim petition till its realization failing which it is liable to pay interest at the rate of 12% per annum for the period of delay. ”

20. Upon perusal of the above, it is made out that on the aspect of apportionment of liability, the learned Tribunal examined the evidence placed on record and therefore, held that the vehicle was being run without possession of a valid commercial permit.

21. On the aspect of apportionment of liability, the learned Tribunal had, held that the insurance company i.e., the respondent herein is entitled to recover the compensation amount from the owner as the offending vehicle was being used without valid non-commercial permit.

22. The defense of non-production of valid permits to run a commercial vehicle is covered under Section 149 of the Motor Vehicles Act, 1988. The said provision has been dealt with and interpreted by this Court time and again, whereby, it is settled that the said non-production is a legally valid defense for the insurance company.



23. In *Sanjay v. Suresh Chand*, 2012 SCC Online Del 4038, a Coordinate Bench of this Court had dealt with the issue of conscious breach of the insurance policy and held as under:

“17. 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, (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'etre 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, [\(2003\) 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.”

24. Upon perusal of the above cited paragraphs, it is made out that the instances of willful disobedience to the terms of the policy would entitle the insurance companies to recover the compensation amount from the insured. Therefore, there is no dispute regarding the onus of liability if the insured is found in violation of the terms of policy.



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25. In the instant case, the appellant has contended that he had duly applied for the permit on 2nd August, 2014 and was not using the vehicle for commercial purposes at the time of accident, and therefore, the learned Tribunal erred in shifting the burden of payment on the appellant.

26. It is well settled that the onus to prove breach of terms of the policy is on the insurance company and therefore, there should be material evidence to support such claims made by the insurance company.

27. As evident from the material on record, the appellant had duly applied for the permit before the occurrence of the accident and there is no evidence to support that the vehicle was being used for commercial purpose at the time of accident.

28. The police report also does not mention about the passengers/witnesses who can prove the claim of vehicle being used for commercial purposes at the time of accident, therefore, in absence of such material evidence, it cannot be said that the driver was using the vehicle for commercial purposes.

29. It is no doubt that the vehicle was purchased by the owner for commercial use, and in furtherance of the said motive, the owner had applied for the permit to use it as a tourist vehicle, however, the said permit was granted from 8th August, 2014.

30. Although the said permit was granted 5 days after occurrence of the accident, the application for such permit depicts the *bonafide* of the owner of the vehicle and therefore, the breach of terms of the policy of the insurance company cannot be termed as a conscious breach.



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31. In the impugned award, the deposition of the driver with regard to vehicle being used for personal use was not cross examined by the insurance company, and no witness were produced to establish the claim of use of the vehicle for commercial purposes before obtainment of permit for the same.

32. Furthermore, the material available on record does not prove that the vehicle was being used for any commercial purposes, and in absence of any material to support such a claim, this Court is inclined to agree that the deposition of the driver is correct and that the learned Tribunal erred in holding that the insurance company can recover the compensation from the appellant.

33. In view of the same, this Court is of the opinion that the learned Tribunal erred in shifting the burden of payment on the owner/driver/appellant herein as the material on record does not prove conscious breach on his part and therefore, the shifting of burden on him is legally untenable.

34. In view of the foregoing discussions on facts as well as law, the impugned award dated 12th August, 2015 passed by the learned Motor Accident Claims Tribunal-2, New Delhi in case bearing no. 526/14 is set aside to the extent of apportionment of the liability upon the appellant herein and it is held that the insurance company shall be completely liable for payment of the compensation awarded to the legal heirs of the deceased/claimants.

35. The instant appeal is allowed and stands disposed of in above said terms. Pending applications, if any, also stands disposed of.



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36. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 2, 2024
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Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 07.08.2024
17:24:50

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