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Court : Delhi

Decided On : Aug-03-2012

Judge : G.P. Mittal

Appeal No. : FAO. NO. 445 OF 2000

Appellant : Sanjay

Respondent : Suresh Chand and Others

Advocate for Def. : Shri. N.K. Pare

Judgement :

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of Rs.2,04,140/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 31.12.1992. The Motor Accident Claims Tribunal (the Claims Tribunal) held that the Respondent Insurance Company successfully proved the breach of the policy and thus exonerated it of its liability and made Respondents No.1 and 2, the driver and owner of the vehicle liable to pay the compensation.

2. In the absence of any Cross-Appeal by the owner driver or the insurer, the finding on negligence has attained finality.

3. The following contentions are raised on behalf of the Appellant:

(i) As per the disability certificate Ex.P-70, the Appellant was declared to be disabled to the extent of less than 40%, yet considering the injury the Appellant is disabled to work for whole life. The Claims Tribunal failed to award any compensation towards loss of earning capacity.

(ii) A consolidated sum of Rs.2,00,000/- awarded towards pain and suffering, disability and future treatment is very much on the lower side.

(iii) No compensation was awarded towards loss of marriage prospects.

(iv) No compensation was awarded towards future treatment.

(v) Even in the case of willful breach of the terms of the policy, the Insurance Company has statutory liability to pay the compensation to the third party with a right to recover the same from the insured. The Claims Tribunal erred in exonerating the Insurance Company completely.

4. Per contra, the learned counsel for the Respondent Insurance Company supports the judgment on the quantum and liability. It is urged that since the respondent successfully proved the breach of the terms of the policy, the Claims Tribunal rightly exonerated it of its liability.

5. The injuries on Appellant's person were very serious. On account of the injuries suffered in the accident, the Appellant suffered rupture of urethra and anal canal was torn. Initially, the Appellant remained admitted in Lok Nayak Jai Prakash Narain Hospital (LNJP Hospital) from 31.12.1992 to 23.01.1993. He underwent successive surgeries. On 06.01.1993 external fixator for fracture of pelvis was done in the Hospital. At the time of the discharge on 23.01.1993, apart from taking antibiotic, the Appellant was advised to clean the wound with Hydrogen Peroxide and normal Saline and Betadine. The Appellant's miseries were not over. X-ray pelvis was done in February, 1993. He was advised daily dressing. Things did not improve. A perusal of the OPD Card dated 18.08.1994 shows that the Appellant was even referred to Psychotherapy for fear of impotence because of stricture urethra.

6. The Appellant remained an indoor patient in Army Hospital from 12.12.1996 to 19.12.1996 and from 01.03.1997 to 07.03.1997 where further procedures were performed. I have before me the record of Army Hospital, Delhi Cantt which shows that on 13.12.1996 internal Urethrotomy was attempted but was abandoned due to bleeding. On 03.03.1997 also, Urethrotomy was attempted under general anesthesia but was abandoned. A certificate dated 07.02.2000 issued by Dr. N.P. Gupta, Professor and Head of Department of Urology, All India Institute of Medical Sciences(AIIMS) shows that the Appellant's misery would never come to an end and he would have to attend the Hospital regularly throughout his life. The certificate given by Dr. N.P. Gupta is extracted hereunder:

"TO WHOM IT MAY CONCERN

This is to certify that Mr. Sanjay, 16 year old male, vide CR No.206767, is a case of road traffic accident fractured pelvis, ruptured urethra along rectourethral fistula. He underwent surgery for his stricture urethra, which was not successful. At present, he has colostomy and suprapubic catheter.

In view of the nature of his disease, he has to attend the Hospital regularly throughout his life for his frequent check up. He will need another surgery for his stricture urethra and rectourethral fistula.

Sd/-

Dr. N.P. Gupta

Professor and Head

Sd/-

Countersigned

Medical Superintendent"

7. The Appellant also consulted doctors in Apollo Hospital who gave an estimate for future surgery as Rs.80,000/-.

8. Section 166 of the Motor Vehicles Act, 1988(the Act) enjoins payment of just compensation. In General Manager, Kerala Road Transport Corporation, Trivandrumv. Susamma Thomas and Ors., (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

9. In Arvind Kumar Mishra v. New India Assurance Company Limited, (2010) 10 SCC 254, the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.”

10. In Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka and Ors., (2009) 6 SCC 1, the Supreme Court emphasized that cases of serious injuries in motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

“90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis--vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time,

compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

11. The Appellant’s photograph on the disability certificate Ex.P-70 and the another photograph on Trial Court record would simply reveal not only immense pain and suffering but humiliation which the Appellant has to suffer day in and day out when he walks to the Hospital with a tube just above his male organ and a catheter to pass urine. It is established that the Appellant cannot carry out any work whatsoever. The loss of earning capacity in his case would be 100%.

12. I am fortified in this view by a report of the Supreme Court in Raj Kumar v. Ajay Kumar and Anr., 2011 (1) SCC 343, where the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

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14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

13. From certificate Ex.P-71, it is proved that he was a meritorious student and was participating in extra curricular activities. He had to leave his studies in between in the 8th Standard. It would be difficult to compensate the Appellant for the loss which he has suffered and mental pain and agony which he has undergone and has to live with it throughout his life. In the circumstances of the case, I award him the compensation as tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by this Court
1.	Loss of Earning Capacity (on the salary of a matriculate) (1222 + 30% (inflation) x 12 x 18)	Rs.3,43,137/-
2.	Pain and Suffering	Rs. 1,50,000/-

3.	Loss of Amenities	Rs. 1,50,000/-
4.	Disfigurement and Loss of Marriage Prospects	Rs. 1,00,000/-
5.	Special Diet upto the date of award (Rs. 25,000/-) Conveyance upto the date of Award (Rs.25,000/-)	Rs. 50,000/-
6.	Future Conveyance	Rs. 50,000/-
7.	Future Special Diet	Rs. 50,000/-
8.	Future Treatment (including Rs.80,000/- for one surgery as per the estimate given by Apollo Hospital	Rs. 1,50,000/-
9.	Medical Treatment upto the date of the award	Rs. 50,000/-
	Total	Rs. 10,93,137/-

14. Thus, there is an enhancement of Rs.8,88,997/- which shall carry interest @ 8% per annum from the date of filing of the Petition till its payment. 70% of the enhanced compensation shall be held in Fixed Deposit for a period of two years, five years, eight years and twelve years in equal proportion in a nationalized bank convenient to the Appellant. The Appellant shall be entitled to monthly interest on the amount deposited. Rest 30% shall be released on deposit.

LIABILITY:

15. While dealing with the issue of liability, the Claims Tribunal exonerated the Insurance Company of its liability on the ground that it has successfully proved the breach of the terms of the policy. The Claims Tribunal' finding are extracted hereunder:

“Shri N.K. Pare counsel for respondent No.3 Oriental Insurance Company has tendered in evidence the cover note of the insurance policy of the offending vehicle Ex.RW2/1 and he has also placed on record notice U/O 12 Rule 8 of CPC which was served on owner and driver of the offending vehicle on 29.1.2000 for

producing the driving licence which is Ex.RW2/2. The driver and owner have failed to produce the driving licence in the court. As per terms and conditions of the policy, the company is liable only if a person driving the offending vehicle holds a valid and effective driving licence on the date of accident. It is mentioned under item No.8 of the cover note itself. The company is, therefore, not liable to pay any compensation to the petitioner. I have gone through the statement of RW2 Shri N.K. Pare Adv. I have also gone through the various documents placed on record by the advocate of the insurance company which are the legal notice Ex.RW2/2 and the copy of the cover note Ex.RW2/1. Despite legal notice served on owner and driver of the offending vehicle, they have failed to produce the driving licence. I have also gone through the terms and conditions of the insurance policy and it is clearly mentioned in the terms and conditions of the insurance policy that the driver must hold a valid and effective driving licence on the date of the accident. In this case, the driver and owner have failed to produce the driving licence. I, therefore, hold that the driver was not holding a valid and effective driving licence on the date of accident. In such case, the insurance company. i.e. respondent No.3 Oriental Insurance Company is not liable to pay any compensation to the petitioner and only the driver and owner of the offending vehicle are liable to pay the entire compensation to the petitioner. Issue No.2 is, therefore, decided in favour of the petitioner and against respondent No.1 and 2 only and not against respondent No.3 Oriental Insurance Company”

16. The finding reached by the Claims Tribunal that the driver and owner failed to produce the driving licence in spite of service of notice Ex.RW2/2 and thus the owner committed breach of the terms of the policy has not been challenged by the owner(insured).

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 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 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 and 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 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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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.”

19. The three Judge Bench of the Supreme Court in National Insurance Company Limited v. Swaran Singh and Ors., (2004) 3 SCC 297 again emphasized 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, Kamla and Lehu. 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.”

20. This Court in MAC APP. 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 National Insurance Company Limited v. Kusum Rai and Ors., (2006) 4 SCC 250, National Insurance Company Limited v. Vidhyadhar Mahariwala and Ors., (2008) 12 SCC 701; Ishwar Chandra and Ors. v. The Oriental Insurance Company Limited and Ors., (2007) 10 SCC 650 and Premkumari and Ors. v. Prahalad Dev and Ors., (2008) 3 SCC 193 and held that in view of the three Judge Bench decision in Sohan Lal Passi(supra) and Swaran Singh, the liability of the Insurance Company vis--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.

21. In the circumstances, I am of the view that the liability of the Insurance Company to satisfy the award in the first instance is statutory. It is bound to satisfy the same and entitled to recover the amount of compensation paid from the driver and the owner (Respondents No.1 and 2) in execution of this very judgment without having recourse to independent civil proceedings.

22. The enhanced amount of Rs.8,88,997/- along with interest shall be deposited with the Claims Tribunal by the Respondent No.3 Oriental Insurance Company Ltd. within a period of six weeks.

23. The Appeal is allowed in above terms.

24. Pending Applications stand disposed of.

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