

Oriental Insurance Company Limited Vs Master Shekhar and Others

Court: Delhi High Court

Date of Decision: April 13, 2012

Hon'ble Judges: G.P. Mittal, J

Bench: Single Bench

Advocate: Pradeep Gaur, for the Appellant;

Final Decision: Dismissed

Judgement

G.P. Mittal, J.

The Appellant Oriental Insurance Company Limited impugns the judgment dated 09.02.2010 passed by the Motor

Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.35,000/- was awarded in favour of the first Respondent who

suffered injuries in an accident which occurred on 01.09.2004. The sole ground of challenge is that although the driver was aged less than 18 years

and therefore, incompetent to hold a driving licence on the date of the accident, the Claims Tribunal not only made the Appellant liable to pay the

compensation, but even the recovery rights were not granted.

2. The facts of this case are very peculiar. FIR No.421/2004 was registered in Police Station Kalyanpuri in respect of the accident on the basis of

a statement of one Mahipal, who is the injured's father. As per his version, which he also testified in the Affidavit Ex.PW-2/A, a TSR No. DL-

1RJ-0577 involved in the accident was parked at a Tea Stall by its driver. Shekhar(the injured) aged about ten years, who was residing in the

neighbourhood sat on the rear seat of the TSR. In the meanwhile, one Harish son of Bhudev Giri, aged 17 years came there, sat on the driver seat,

started the TSR and drove it which resulted in an accident.

3. It is urged by the learned Counsel for the Appellant that since the TSR was driven by a person aged less than 17 years, the breach of the

insurance policy was writ large and the Insurance Company was entitled to at least recovery rights.

4. The contention raised on behalf of the Appellant is misconceived. It has to be borne in mind that the breach of the terms of the policy must be

proved to have been committed by the Insured. It is nobody's case that the insured entrusted the TSR to a person not possessed of a valid driving

licence. The driver was taking tea at the time of the accident. Harish, who drove the scooter without any permission or authorization of the owner

or the driver in fact, committed theft of the TSR. Thus, It cannot be said that the owner was guilty of committing breach of the terms of the policy.

5. The instant case is squarely covered by the report of the Supreme Court in United India Insurance Company Ltd. Vs. Lehu and Others, where

while relying on Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, and Sohan Lal Passi Vs. P. Sesh Reddy and others, the

Supreme Court held as under: -

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 license .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....

6. In view of the above, it cannot be said that there was any conscious or willful breach on the part of the Insured, the Appellant Insurance

Company, therefore, cannot avoid its liability.

7. The Appeal is devoid of any merit; the same is accordingly dismissed. Pending applications also stand disposed of.