

(2011) 10 DEL CK 0078

Delhi High Court

Case No: FAO 488 of 1999

Ami Chand and
Another

APPELLANT

Vs

Jai Prakash and
Others

RESPONDENT

Date of Decision: Oct. 12, 2011

Acts Referred:

- Motor Vehicles Act, 1939 - Section 11, 110A, 112, 149(2), 3
- Motor Vehicles Act, 1988 - Section 166, 168
- Penal Code, 1860 (IPC) - Section 279, 304A

Citation: (2011) 126 DRJ 584 : (2012) 1 ILR Delhi 460

Hon'ble Judges: Reva Khetrapal, J

Bench: Single Bench

Advocate: O.P. Mannie, for the Appellant; Salil Paul, Advocate for the Respondent No. 3,
for the Respondent

Judgement

Reva Khetrapal, J.

This appeal is directed against the judgment of the Motor Accidents Claims Tribunal, Karkardooma, Delhi dated 23.07.1999, whereby a sum of Rs. 32,000/- was awarded in favour of the Appellants and against the Respondents with interest at the rate of 9% per annum from the date of the institution of the Claim Petition till realisation.

2. Concisely, the facts are that on 16.07.1988, at about 12.15 p.m, the bicycle of one Shakti Kumar, aged 12 years, was hit by a truck bearing No. DHL-5657, being driven rashly and negligently by the Respondent No. 1, on account of which Shakti Kumar sustained injuries to which he succumbed. The Appellants are the father and mother of the said Shakti Kumar (hereinafter referred to as "the deceased"), who filed a Claim Petition under Sections 110A & 92A of the Motor Vehicles Act, 1939 claiming compensation in the sum of Rs. 3 lacs against the Respondent No. 1-driver, the

Respondent No. 2-owner and the Respondent No. 3-Insurance Company. The learned Claims Tribunal, after conducting an enquiry against the said Respondents, held that the accident was the outcome of the rash and negligent driving of the Respondent No. 1, against whom FIR No. 10/88 had also been registered under Sections 279/304A Indian Penal Code. On the aspect of quantum of compensation, after noting that the deceased was a student of sixth standard at the time of the accident, the Tribunal awarded damages for the death of the child in the sum of Rs. 30,000/- with funeral expenses of Rs. 2,000/-, in all, a sum of Rs. 32,000/- with interest thereon. It, however, exonerated the Insurance Company from the payment of compensation on the ground that the Respondent No. 1-driver, Jai Prakash held no driving licence at the time of the accident.

3. Aggrieved by the aforesaid findings of the Claims Tribunal, the present appeal has been preferred by the Appellants assailing the award of the Tribunal on the ground that the Tribunal awarded a very meagre amount of compensation, in the sum of Rs. 32,000/- only, and on the further ground that the Tribunal failed to appreciate that the Respondent No. 1-driver of the offending vehicle was having a driving licence and was not disqualified from holding a driving licence, and as such, all the three Respondents, namely, the driver, the owner and the insurer of the offending vehicle, ought to have been saddled with the liability to pay the award amount to the Appellants.

4. Mr. O.P. Mannie, the Learned Counsel for the Appellants contended that a paltry amount of compensation had been awarded to the Appellants which deserved to be enhanced on all counts. He submitted that the Tribunal, after observing that the deceased was a child of 12 years, who was studying in the sixth standard at the time of his unfortunate demise, proceeded to award a lumpsum of Rs. 32,000/- to the claimants against the claimed amount of Rs. 3 lacs, throwing to the winds the settled principles of law for computing compensation payable to the legal representatives of a deceased person. Mr. Mannie further contended that it was incumbent upon the Tribunal to have determined the pecuniary and non-pecuniary losses suffered by the Appellants before awarding compensation to the Appellants. Instead, the Tribunal awarded a lumpsum compensation without the application of any multiplier and without even awarding nominal damages to the Appellants on account of the loss of estate and the loss of love and affection of the deceased.

5. In order to substantiate his contention, Mr. Mannie heavily relied upon the judgment of the Supreme Court rendered in the case of [R.K. Malik and Another Vs. Kiran Pal and Others](#), . In the said case, twenty-nine school-going children were drowned as a result of a road accident caused by the overturning of the bus in which the said children were proceeding to the school, which bus after overrunning the road and breaking the railing got drowned in the Yamuna river at Wazirabad Yamuna Bridge. The Tribunal, by its common judgment, awarded a sum of Rs. 1,55,000/- to the dependents of the children between the age group of 10 to 15

years and Rs. 1,65,000/- to the dependents of children between 15 to 18 years. In the case of three children who were less than 10 years, the Tribunal awarded compensation of Rs. 1,05,000/-, Rs. 1,30,000/- and Rs. 1,31,000/- in their respective cases. Against the said order of the Tribunal, appeals were filed before the High Court, which were heard together by the High Court. The High Court by its common order held that the Appellants were entitled to enhancement of compensation in all the cases by Rs. 75,000/- and Rs. 1,000/- (if not already awarded by the Tribunal) and interest at the rate of 7.5% per annum from the date of the filing of the petition till payment. Feeling aggrieved, a SLP was filed by the Appellants, contending that the High Court ought to have applied the ratio of [Lata Wadhwa and Others Vs. State of Bihar and Others](#), to the facts of the case and also that it had failed to award a fair and reasonable compensation. The Supreme Court, observing that compensation in cases of motor accidents, as in other matters, is paid to the dependants of the deceased persons for reparation of damages, and to put them in the pre-accidental position, held that the damages so awarded should be an adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong committed. Compensation is, therefore, required to be paid for prospective pecuniary loss. On the aspect of computation of compensation, after noticing that the Act provided for payment of "just compensation" vide Sections 166 and 168 of the Motor Vehicles Act, 1988, the Court observed that it had repeatedly been held that it is the multiplier method which should be applied as the said method is based upon the principle that the claimant must be paid a capital sum, which would yield interest to provide material benefits of the same standard and duration as the deceased would have provided for the dependents, if the deceased had lived and earned. The Court further observed that uniform application of the multiplier method ensures consistency and certainty and prevents different amounts being awarded in different cases.

6. Applying the ratio of the aforesaid judgment to the present case, I have not the least bit of hesitation in holding that the learned Tribunal did not award "just compensation" for the pecuniary losses suffered by the Appellants as the Tribunal threw to the winds the application of the multiplier method, which, as noticed above, the Supreme Court has unequivocally laid down, should be uniformly applied for the purpose of ascertaining the quantum of "just compensation" in all cases of motor accidents. The learned Tribunal also failed to award "just compensation" for the non-pecuniary losses sustained by the Appellants, which, in my opinion, it was bound to do. It is, therefore, proposed to re-compute the compensation in accordance with the settled principles of law as enunciated by the Supreme Court from time to time and it is upon this exercise that I now embark.

7. Assuming the notional income of the deceased child to be in the sum of Rs. 15,000/- per annum in terms of Schedule II, and applying the multiplier of 15 specified in the Second Column of the table in Schedule II to the Act, the pecuniary damages payable to the Appellants are computed to be in the sum of Rs. 2,25,000/-.

It is a well settled legal principle that in addition to awarding compensation for pecuniary loss, compensation must also be granted for the future prospects of the children. In the case of Lata Wadhwa (supra) and [M.S. Grewal and Another Vs. Deep Chand Sood and Others,](#) the Supreme Court recognised that denying compensation towards future prospects would be unjust, and deemed it appropriate to grant Rs. 75,000/- as compensation for the future prospects of the children to be paid to each claimant over and above the awarded amount. Such award of future prospects was also approved of in the case of R.K. Malik (supra). Accordingly, it is deemed just and fair to award a sum of Rs. 75,000/- towards the future prospects of the deceased child, who was admittedly a student in pursuit of education for his advancement in life.

8. So far as the non-pecuniary damages are concerned, as noticed above, the Tribunal has not awarded any compensation for the non-pecuniary damages sustained by the claimants. Accordingly, a sum of Rs. 75,000/- is awarded towards non-pecuniary damages, including loss of expectation of life, loss of estate of the deceased and loss of love and affection of the deceased. The total compensation awarded thus comes to Rs. 3,75,000/- (Rupees Three Lac Seventy Five Thousand Only). The learned Tribunal awarded interest at the rate of 9% per annum from the date of the institution of the petition till the date of realisation on the compensation awarded by it. In view of the fact that the award amount has been enhanced considerably by this Court, the Appellants are held entitled to interest on the enhanced award amount at 7.5% per annum for the aforesaid period. On the original award amount of Rs. 32,000/-, interest at the rate of 9% per annum as awarded by the Tribunal is held to be payable.

9. The next question which arises for consideration in the present appeal is the question as to the respective liability of the Respondents to pay the award amount. Mr. Mannie strongly contended on behalf of the Appellants that even assuming that the Respondent No. 1-driver was not holding a valid and effective driving licence on the date of the accident, the Insurance Company cannot be exonerated from its liability to make payment of the award amount in the first instance. The argument of Mr. Mannie is that in the present case the driver was not disqualified from holding a driving licence, and as such, there was no breach of the policy conditions. Reference was made by Mr. Mannie in this regard to the relevant portion of the insurance policy (Exhibit RW2/A) captioned "Persons or Classes of Persons entitled to drive", which reads as follows:

Persons or Classes of Persons entitled to drive

Any of the following:

(a) The Insured

(b) Any other person who is driving on the Insured's order or with his permission. Provided that the person driving holds or had held and has not been disqualified

from holding an effective driving licence with all the required endorsements thereon as per the Motor Vehicles Act and the Rules made thereunder for the time being in force to drive the category of Motor Vehicle insured hereunder.

10. On the basis of the aforesaid section contained in the insurance policy, Mr. Mannie contended that the Insurance Company could not be exonerated from its liability to pay compensation unless and until it proved that the driver was not only not duly licenced, but also disqualified from holding an effective driving licence.

11. In order to substantiate his aforesaid contention, Mr. Mannie relied upon the provisions of 96(2)(b)(ii), which read as under:

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification;

12. He contended that according to the construction of this section, the Insurance Company can succeed for establishing its defence if the person was not duly licensed or he was disqualified from holding or obtaining the driving licence during the period of disqualification. In other words, either of the conditions has to be duly fulfilled. But in the policy issued in the present case (Ex.RW2/A), the word "and" is used as conjunction instead of the word "or" used in the Statute. By the use of the word "and", it stands established that the Insurance Company has to prove that the driver was not only not duly licensed, but was also disqualified for holding a licence. In this context, Mr. Mannie relied upon a Division Bench judgment of the Madras High Court in the case of [Srinivasa Roadways Vs. Saroja and Others](#), wherein the Division Bench, after referring to the provisions of Sub-clause (ii) of Clause (b) of Section 96(2) pertaining to breach of the policy conditions and the relevant portion of the insurance policy pertaining to the limitations as to the use of the vehicle in the said case, made the following apposite observations:

... the three sub-clauses in Section 96(2)(b)(ii) indicate the amplitude of permissible exclusion. As the sub-clauses are disjunctive, an option is given to the Insurance Company to exclude at its discretion driving either by a named person or by a Person who is not duly licensed or by a person who has been disqualified for holding or obtaining a driving licence or to exclude driving by all these three classes of persons. In other words, it is open to the Insurance Company to refuse to cover a risk brought about by a person like R.-1 in this case, who at the time of the accident, had held a licence, but had no effective licence covering the period of the accident. But, unfortunately, the Insurance Company, has in this case exercised its option even to include a person who had held a licence prior to the date of the accident (that is to say, a licence that had expired prior to the date of the accident) and yet was not disqualified for holding or obtaining such a licence at the time of the accident. The Insurance policy issued by the Motor Owners Insurance Company Ltd.. in this case has been marked as Ex. B 8. In the schedule to this policy, the limitations

as to use of the bus have been defined, and it is stipulated that,

the vehicle may be driven either by the Insured or any other person provided he is in the insured's employ and is driving on his order or with his permission; provided that the person driving holds a licence to drive the motor vehicle or has held and is not disqualified for holding or obtaining such a licence.

What is the construction to be placed on the words "the person driving holds a licence to drive the motor vehicle or has held and is not disqualified for holding or obtaining such a licence?" This clause clearly contemplates a person who did not hold a valid licence on the date of the accident, but who had held a licence previously and who had not, at the time of accident, been disqualified for holding or obtaining such a licence. The Insurance Company, with its great business experience, must have thought it right to cover an accident caused by a person who has had considerable driving experience, and yet due to inadvertence or absentmindedness, has not chosen to renew that licence during the period allowed by law and has been involved in an accident while he had not yet obtained a renewal of the licence.

13. On the strength of the aforesaid judgment, it was contended that if all the conditions laid down in the section are not reproduced in the policy and the policy positively undertakes to cover liability in respect of an accident caused by a person who though not having an effective licence at the time of the accident, has not been disqualified to hold a licence, the Company cannot escape liability. It was further contended that there cannot be a compromise between the word "or" and the word "and". Reliance in this regard was also placed on the judgment of the Karnataka High Court in the case of Oriental Insurance Company v. Mohammed Sab Ali Sab Kaladagi and Ors. II (1999) ACC 70. In the said case, the clause in the insurance policy issued by the Appellant was akin to the clause in the insurance policy in the present case. Referring to the provisions of Section 149(2)(a)(ii), the Court made the following observations:

5. The wording used as "or" assumes much importance in this case. According to the construction of this section, the Insurance Company can succeed only if the person was not duly licensed or he was disqualified from holding or obtaining the driving licence during the period of disqualification. According to the construction of the language either of the conditions has to be duly fulfilled. But in the policy issued the word "and" is used as conjunction. By the use of word "and" it goes to show that the Insurance Company has to prove that the driver was not only not duly licensed but also was also disqualified for holding the licence. The word "or" and the word "and" used in the policy assumes much importance. There cannot be compromise between the word "or" and "and". The plain language as it is read has to be understood. In this direction, Mr. B.S. Patil, Learned Counsel for the Respondents relied upon the observation as how the construction of the statute be understood. On page 96 of the Interpretation of Statutes by Maxwell it is stated as follows:

To suppress the mischief and advance the remedy. It is said to be the duty of the Judge to make such construction of a statute as shall suppress the mischief and advance the remedy.

6. The another golden rule (sic.) that is to be remembered is that the statute is capable of being interpreted in two ways. In the case on hand the claimants shall become the victims in the event the Insurance Company is exonerated. The very purpose of issuing the policy is to protect the third party risk. If the Insurance Company is allowed to go scot free on this ground, great hardship would be caused to the claimants. Hence in view of the impending danger that is likely to arise in the case of claimants, the beneficial interpretation has to come to the rescue of the claimants. It is of-quoted that the duty is to provide the light and not to generate heat. Unless the Insurance Company can place any of the materials covered by Sections 19, 20, 132, 134 and 185, it can never be said that there was any disqualification to hold the licence. It goes without saying that when the specific contention of disqualification is taken by the Insurance Company, the burden is also on the Insurance Company to adduce the evidence that the driver was not duly licensed and was disqualified. No material evidence is adduced in this direction.

14. Mr. Salil Paul, the Learned Counsel for the Respondent No. 3, on the other hand, sought to rebut the aforesaid contentions of Mr. Mannie and to support the award of the Tribunal by relying upon the provisions of Chapter II of the Motor Vehicles Act, 1939, and, in particular, the provisions relating to the necessity for possessing a driving licence as incorporated in Section 3, and those relating to renewal of driving licences as contained in Section 11 of the said Act. For the sake of convenience, the said sections, insofar as the same are relevant for the present purposes, are reproduced hereunder:

Section 3

Necessity for driving licence.- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a motor vehicle as a paid employee or shall so drive a transport vehicle unless his driving licence specifically entitles him so to do.

(2) A State Government may prescribe the conditions subject to which Sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle.

(3) Notwithstanding anything contained in Sub-section (1), a person who holds an effective driving licence authorizing him to drive a motor car may drive any motor cab hired by him for his own use.

Section 11

11. Renewal of driving licences.- (1) Any licensing authority may, on application made to it, renew a licence issued under the provisions of this Act with effect from

the date of its expiry:

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive as a paid employee or to drive a transport vehicle or where in any other case the original licence was issued on production of medical certificate, the same shall be accompanied by a fresh medical certificate in Form C as set forth in the First Schedule, signed by a registered medical practitioner, and the provisions of Sub-section (5) of Section 7 shall apply to every such case.

(2) ...

(3) ...

(4) ...

(5)

15. Mr. Salil Paul contended that the learned Tribunal, on the basis of the evidence adduced, had rightly come to the conclusion that the licence of the Respondent No. 1-driver was valid only upto 23.01.1988, and that he had taken the licence back from the Court on 31.07.1989 for the purpose of getting the same renewed. Thus, for the entire period intervening 24.01.1988 to 31.07.1989, the Respondent No. 1 was not holding a valid and effective driving licence. The accident in question admittedly took place on 16.07.1988, on which date the Respondent No. 1 was not holding a valid driving licence. Mr. Paul further contended that the Respondent No. 1 had also been challaned by the Police u/s 3/112 of the Motor Vehicles Act, 1939, for not possessing a valid driving licence, and this fact had been taken into account by the learned Tribunal for arriving at the finding that on the date of the accident, the offending vehicle was being driven by its driver without any valid driving licence.

16. Having considered the rival submissions of the parties, in my opinion, though the facts in the present case conclusively establish that on the date of the accident the Respondent No. 1-driver was driving the offending vehicle without any valid driving licence, and the learned Tribunal has rightly held that the offending truck was being driven by a person who was not holding a valid driving licence, the Insurance Company cannot be exonerated from making payment of the award amount in the first instance. The question as to whether an Insurance Company can avoid its liability in the event it raises a defence as envisaged in Sub-section (2) of Section 149 of the Act, corresponding to Sub-section (2) of Section 96 of the Motor Vehicles Act, 1939, was the subject matter of consideration by a three-Judge Bench of the Supreme Court in the case of [National Insurance Co. Ltd. Vs. Swaran Singh and Others](#), wherein a large number of decisions were taken note of and considered, and thereafter the Court arrived at the following conclusion: (SCC, Pg.

Clause (a) opens with the words "that there has been a breach of a specified condition of the policy", implying that the insurer's defence of the action would depend upon the terms of the policy. The said sub-clause contains three conditions of disjunctive character, namely, the insurer can get away from the liability when (a) a named person drives the vehicle; (b) it was being driven by a person who did not have a duly granted licence; and (c) driver is a person disqualified for holding or obtaining a driving licence.

17. The Court further observed that the Insurance Company with a view to avoid its liabilities is not only required to show that the conditions laid down u/s 149(2)(a) or (b) are satisfied, it is further required to establish that there has been a breach on the part of the insured. It was also observed that a contract of insurance also falls within the realm of contract, thus, like any other contract, the intention of the parties must be gathered from the expressions used therein. The insurer's liability, however, arises both from contract as well as statute.

18. Tested on the aforesaid anvil, in my view, the Insurance Company cannot be absolved of its liability in the absence of cogent evidence on the record to show that the driver of the vehicle was disqualified from holding an effective driving licence, for, the insurance policy Ex.RW2/A clearly stipulates that any person who is driving on the insured's order or with his permission would be included in the classes of persons entitled to drive the vehicle in question provided that he holds or had held and has not been disqualified from holding an effective driving licence as per the Motor Vehicles Act and the rules framed thereunder. In such circumstances, to my mind, clearly in the present case, it cannot be said that the insured had breached the conditions of the insurance policy as the person driving the vehicle had held a driving licence and it has not been established on record that he had been disqualified from holding an effective driving licence. It is well established that the person who alleges breach must prove the same. The Insurance Company was, therefore, required to establish the breach of the policy by cogent evidence. It has failed to prove that there has been breach of the conditions of policy on the part of the insured, and therefore, it cannot be absolved of its liability.

19. In view of the legal position enunciated above, it is held that the Insurance Company shall pay the amount of compensation as adjudged in paragraph 8 hereinabove to the Appellants by depositing the same with the Registrar General of this Court within 30 days of the date of the passing of this order, which shall be released to the Appellants in equal proportion.

20. The appeal stands disposed of accordingly. There shall be no order as to costs.

21. Records of the Tribunal be sent back to the concerned Tribunal.