

NEW INDIA ASSURANCE CO.LTD. .... Appellant  
Through : Mr. Rajesh Kumar, Adv.

versus

HARUN AZMI & ORS. .... Respondents  
Through : Mr. S.P. Sharma and  
Ms. Shailja, Advs.  
for R-2 & 4.

**CORAM :-**  
**THE HON'BLE MR. JUSTICE J.R. MIDHA**

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|----|-----------------------------------------------------------------------|-----|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not?                                | YES |
| 3. | Whether the judgment should be reported in the Digest?                | YES |

**JUDGMENT (Oral)**

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.2,00,000/- has been awarded to claimants.

2. The accident dated 3<sup>rd</sup> October, 1999 resulted in the death of Mamoon Azmi. The deceased was survived by his parents, brother and sister who filed the claim petition before the learned Tribunal.

3. The deceased was aged 26 years at the time of the accident and was a student of second year of graduation in Jamia Millia Islamia. The learned Tribunal presumed the income of the deceased to be Rs.1,500/- per month,

deducted 1/3<sup>rd</sup> towards the personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at Rs.1,92,000/-. Rs.8,000/- has been awarded for loss of love and affection and loss of estate. Total compensation awarded is Rs.2,00,000/-.

4. The only ground urged by learned counsel for the appellant at the time of hearing of this appeal is that the liability of the appellant is limited to Rs.15,000/- and, therefore, the appellant is not liable for the compensation beyond Rs.15,000/-.

5. The learned Tribunal has held liability of the appellant to be unlimited. The learned Tribunal has given a finding that the carbon copy of the policy, Ex.RW1/1 is not legible. There is no term and condition in Ex.PW1/1 about the liability of the appellant to be limited. The learned Tribunal has further held that in the column with respect to the premium charged from the insured, the liability has been recorded as unlimited and, therefore, the plea of limited liability raised by the appellant was rejected by the learned Tribunal. The learned Tribunal also rejected the plea of the appellant that the Tariff Schedule supports the limited liability of the appellant on the ground that the witness of the appellant failed to explain how the policy, Ex.RW1/1 stipulate the liability of the company to be unlimited. The learned counsel for the appellant referred to and relied upon the carbon copy of the insurance policy, Ex.RW1/1 which has been perused by

this Court. The document is not legible. That apart there is no clause in the said policy limiting the liability of the appellant to Rs.15,000/-. The insurance policy is a document of contract between the parties and no clause can be presumed which does not form part of the contract. The learned Tribunal has given a well reasoned finding which respect to the contention raised by the appellant. The findings of the learned Tribunal are upheld.

6. The learned counsel for the appellant refer to and relies upon the judgment of Hon'ble Supreme Court in the case of **Noorjahan vs. Sultan Rajia 1997 ACJ 1** in support of the plea that the liability of the insurance policy in respect of a passenger is always limited.

7. This judgment does not support the appellant as the appellant has not succeeded in proving the terms and conditions of the policy.

8. For all the above reasons, the appeal is dismissed.

9. The appellant has deposited the entire award amount with this Court in terms of the order dated 4<sup>th</sup> August, 2009 and the said amount is kept in fixed deposit.

10. The learned counsel for the respondents submit that respondent Nos.1 and 3 have expired and their shares have devolved upon respondent No.2 who is the mother of the deceased.

11. Respondent No.2 is substituted in place of respondent Nos.1 and 3.

12. The Registrar General is directed to release a sum of Rs.50,000/- to respondent No.2 and Rs.50,000/- to respondent No.4 and the remaining award amount be kept in fixed deposit in the name of respondent No.2 for a period of one year on which monthly interest be paid to her but no loan, advance or withdrawal be permitted during the said period. The original fixed deposit receipt with proper endorsement be released to respondent No.2.

13. The statutory amount be released to the appellant through counsel within four weeks.

14. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.

**DECEMBER 02, 2009**  
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**J.R. MIDHA, J**