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

% *Date of Judgment: 27.9.2011*

+ **MAC APPEAL No. 324/2011**

JAGWATI & ORS.

.....Appellants
Through: Mr.J.N.Singh, Advocate.

Versus

MOHD. SAZID @ SHOKEEN & ORS. Respondents
Through: Mr.Santosh Paul and
Ms.Mohita Bagati, Advocates
for the R-3.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

For order see MAC APPEAL No.154/2011.

INDERMEET KAUR, J.

SEPTEMBER 27, 2011
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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment: 27.9.2011

+MAC APPEAL No. 154/2011 and CM Nos. 8699/2011 & 3644/2011

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr.Santosh Paul and
Ms.Mohita Bagati,
Advocates.

Versus

HAZARA & ORS. Respondents
Through: Mr.J.N.Singh, Advocate.

AND

MAC APPEAL No. 207/2011 and CM Nos. 4890/2011 & 8695/2011

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr.Santosh Paul and
Ms.Mohita Bagati,
Advocates.

Versus

ASMAA & ORS. Respondents
Through: Mr.J.N.Singh, Advocate.

AND

MAC APPEAL No. 209/2011 and CM Nos. 4925/2011 & 8698/2011

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr.Santosh Paul and
Ms.Mohita Bagati,
Advocates.

Versus

JAGWATI DEVI & ORS. Respondents
Through: Mr.J.N.Singh, Advocate.

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AND
MAC APPEAL No. 320/2011

ASMAA & ORS.

.....Appellants
Through: Mr.J.N.Singh, Advocate.

Versus

MOHD. SAZID @ SHOKEEN & ORS.

.....Respondents
Through: Mr.Santosh Paul and
Ms.Mohita Bagati,
Advocates for the R-3.

AND

MAC APPEAL No. 321/2011

HAZARA & ORS.

.....Appellants
Through: Mr.J.N.Singh, Advocate.

Versus

MOHD. SAZID @ SHOKEEN & ORS.

.....Respondents
Through: Mr.Santosh Paul and
Ms.Mohita Bagati, Advocates
for the R-3.

AND

MAC APPEAL No. 324/2011

JAGWATI & ORS.

.....Appellants
Through: Mr.J.N.Singh, Advocate.

Versus

MOHD. SAZID @ SHOKEEN & ORS.

.....Respondents
Through: Mr.Santosh Paul and
Ms.Mohita Bagati, Advocates
for the R-3.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

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1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest?

Yes

INDERMEET KAUR, J. (Oral)

1. This judgment shall dispose of six appeals which are pending before this Court; three of which have been filed by the Insurance Company and balance three by the claimants of the deceased victims. Record shows that three persons had died in an accident which had occurred in the intervening night of 13-14.6.2007 while travelling in an open canter; the deceased were Sattar, Asgar Ali and Babu Ram; Sattar had died at the spot; Babu Ram and Asgar Ali had succumbed to their injuries in the hospital. The claimants of the deceased victims had filed three claim petitions before the Motor Accident Claim Tribunal.. One eye-witness PW-5 Anil Kumar had been examined in evidence. His testimony was to the effect that he along with his uncle Bhagwat, Asgar Ali, Babu Ram, Sattar and other persons were going to Rawatsar in a canter to purchase buffaloes; the cantor was being driven by Shokeen when their vehicle was hit by the offending

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truck which was coming on the wrong side as result of which all the persons sitting in the cantor sustained injuries; pursuant to which the aforementioned persons namely Babu Ram, Asgar Ali and Sattar had died; PW-5 had sustained injuries. In his cross-examination he had denied the suggestion that he was not an eye-witness; his categorical denial was that he was not sleeping at that time; he had also denied the suggestion that the accident had occurred because of the negligence of the driver of their canter. Testimony of PW-5 was examined in depth and detail by the learned Tribunal.

2. The question which was posed before the Tribunal was whether the Insurance Company could ward off its liability in terms of Section 147 of the Motor Vehicles Act. Section 147 of the said Act reads as under:

"147. Requirements of policies and limits of liability

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; or

(b) insurer the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily ¹[injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

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(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and

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different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

3. The question which has to be answered in this case is as to whether the three deceased persons who were going in the canter to purchase their buffaloes were sitting in the said vehicle as gratuitous passengers or were sitting in the cantor with the deemed goods. To answer this question; testimony of PW-5 is relevant; there is no dispute to the fact that the said deceased persons were going in the cantor to purchase buffaloes; the purpose was to go in the cantor to purchase these buffaloes and to come back with the said articles; in this intervening period the unfortunate accident occurred. The proposition is well settled that the liability of the insurance company extends to a person who is travelling in the vehicle with his goods or is carrying his articles with him. Purpose and the import of this legislation i.e. the Motor Vehicles Act which is a benevolent legislation has been

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engrafted to ensure that speedy compensation is afforded to the victims of an unfortunate accident and this has to be kept in mind. Testimony of PW-5 has to be thus viewed and examined in this background. The whole purpose of sitting in this cantor was to go to the market to purchase the buffaloes and to come back with them in the same vehicle. This is clear from the version of PW-5. The words 'passenger', 'gratuitous passenger' and 'non-gratuitous passenger' have not been defined in the Motor Vehicle Act. Learned Tribunal had examined the facts from this angle as also the purpose of the enactment of the legislation. It had rightly noted that the aforementioned persons (deceased) were neither 'paid' and nor 'gratuitous passengers'; they were sitting in the cantor with the deemed articles; insurance company could thus not ward off its liability. The finding of the Tribunal on this count suffers from no infirmity.

4. In 2009 ACJ 119 National Insurance Co.Ltd. Vs. Sarojamma and Ors. a similar situation has arisen; a vegetable vender was travelling in a Tempo to procure vegetables for his shop when the unfortunate accident occurred; accident had occurred before he had reached his destination point. The evidence had come on record that the vehicle had been hired by him for the purpose of

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transportation of his goods; he not being a gratuitous passenger and nor a fare paid passenger insurance company was held liable. This court finds support from the ratio of this judgment delivered by the Karnataka Bench.

5. A reading of Section 147 of the Motor Vehicle Act in fact clearly shows that if the death or injury has occurred to any person including the owner of the goods or his authorized representative in the vehicle, insurance company is liable. Evidence in the present case shows that the accident had occurred before the victim could reach the destination point to purchase their buffaloes. The vehicle had been hired by them only for transporting the goods and they were travelling in this vehicle for this purpose which was the transportation of their goods; even though the goods were not in the vehicle when the vehicle met with the accident but the vehicle was proceeding to reach the place of its destination, in such a scenario it cannot be said that the victims were gratuitous or paid passengers. The vehicle i.e. the cantor had been hired by them only this purpose; in such a situation if their vehicle had met with an accident, it had to be deemed that the goods were with them. It is thus clear that the finding of the learned Tribunal on this count suffers from no

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infirmity. Appeals of the insurance company are accordingly dismissed.

6. The other three appeals filed by the claimants of the deceased victims are aggrieved by the fact that under the head of 'love and affection' compensation has been granted on a low count. This is the only challenge.

7. Claim Petition No.263/2010 - Asgar Ali was the deceased victim; he was 40 years of age on the date of the accident. His minimum wages had been taken into account. He was married had a wife and three children. Loss of love and affection has been quantified at Rs.10,000/-. All children were dependents. Keeping in view the ratio of the judgment of this Court in the case of Kailash Kaur & Anr. Vs. New India Assurance Co. Ltd., MAC APPEAL No.318/2008 decided on 24.3.2009, the amount awarded under the head of 'loss of love and affection' needs to be enhanced. There is no doubt that the widow and the minor children have lost out on the love and affection which would have been showered upon them by the deceased. They were in their growing and formative years when they lost out on these blessings on account of the death of their father. The amount awarded under the head of 'love and affection' is accordingly enhanced

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from Rs.10,000/- to Rs.1,00,000/-. The Award is modified on this score only.

8. Claim Petition No.260/2010- Deceased was Sattar; he was 40 years of age; his minimum wages have been taken into account; benefit of future prospects has been given. He had a wife, two minor children and an old aged mother; in view of the enhancement of the awarded amount under the head of 'loss of love and affection' in claim petition no.263/2010 'loss of love and affection' in this case is also enhanced from Rs.10,000/- to Rs.1,00,000/-. This is the only modification made.

9. The third claim petition is claim petition No.262/2010. Deceased Babu Ram was also 40 years of age; his minimum wages have been taken into account; benefit of future prospects has been granted. In this case also the victim was married and he had a wife, two minor children. In view of the enhancement of the awarded amount under the head of 'loss of love and affection' in claim petition no.263/2010 'loss of love and affection' in this case is also enhanced from Rs.10,000/- to Rs.1,00,000/-. This is the only modification made.

10. The statutory amounts be released in favour of the insurance company. The awarded amount be released to the

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claimants in terms of the directions contained in the Award dated
15.11.2010.

11. All the appeals are disposed of.



INDERMEET KAUR, J.

SEPTEMBER 27, 2011
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