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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12th December, 2012

+ **MAC. APP. 221/2011**

SURESH & ORS.

..... Appellant

Through: Mr. Navneet Goyal with Ms. Suman N.
Rawat, Advocates

Versus

RELIANCE GENERAL INSURANCE CO. LTD. Respondents

Through: Mr. Sameer Nandwani, Advocate

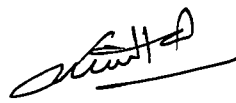
CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The present Appeal is dismissed in terms of the judgment passed today in MAC.APP.672/2011 titled '*RELIANCE GENERAL INSURANCE CO. LTD. v. JYOTI & ORS.*'
2. For detailed order, please see the above mentioned judgment.


(G.P. MITTAL)
JUDGE

DECEMBER 12, 2012

pst

§ 3, 4, 12, 13 & 42

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

Date of decision: 12th December, 2012

+ **MAC. APP. 672/2011**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Sameer Nandwani, Advocate.

Versus

JYOTI & ORS. Respondents
Through: Mr. Navneet Goyal with Ms. Suman N.
Rawat, Advocates for Respondent No.1.

+ **MAC. APP. 673/2011**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Sameer Nandwani, Advocate.

Versus

NISHAR AHMED & ORS. Respondents
Through: Mr. Navneet Goyal with Ms. Suman N.
Rawat, Advocates for Respondent No.1
& 2.

+ **MAC. APP. 674/2011**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Sameer Nandwani, Advocate.

Versus

SITA & ORS. Respondents
Through: Mr. Navneet Goyal with Ms. Suman N.
Rawat, Advocates for Respondent No.1.

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+ **MAC. APP. 676/2011**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Sameer Nandwani, Advocate.

Versus

SURESH & ORS. Respondents
Through: Mr. Navneet Goyal with Ms. Suman N.
Rawat, Advocates for Respondent No.1
& 2.

+ **MAC. APP. 221/2012**

SURESH & ORS. Appellants
Through: Mr. Navneet Goyal with Ms. Suman N.
Rawat, Advocates

Versus

RELIANCE GENERAL INSURANCE CO. LTD. Respondents
Through: Mr. Sameer Nandwani, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These five Appeals arise out of a common judgment dated 18.03.2011 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation as tabulated hereunder was awarded by the

Claims Tribunal:-

S. No.	Petition No.	MAC.APP.No.	Name of the Injured/Claimant	Amount of Compensation
1.	142/2010	672/2011	Jyoti	₹20,000/-
2.	111/2010	673/2011	Nishar Ahmed and Anwari	₹7,69,416/-
3.	121/2010	674/2011	Sita	₹1,40,000/-
4.	137/2010	676/2011	Suresh and Ram Naresh	₹1,37,228/-
5.	-	221/2012 (Cross Objection of 676/2011)	Suresh and Ram Naresh	-

2. The amount of compensation is not challenged by the Appellant Insurance Company. However, in MAC.APP.676/2011 the Claimants have filed Cross-Objections and seek enhancement of compensation.
3. I shall deal with the Cross-Appeal a little later. First of all, let me advert to the four Appeals filed by the Reliance General Insurance Co. Ltd.
4. The only ground of challenge raised by the Appellant Insurance Company is that Respondent No.3 Amit @ Nata, driver of RTV No.DL-1VA-1494 did not possess a valid and effective driving licence to drive the insured vehicle. The Appellant was, therefore, entitled to avoid the policy. Thus, the Appellant Insurance Company was at least entitled to recovery rights against the owner and the driver of the offending vehicle.
5. The learned counsel for the Appellant Insurance Company urges that in these cases a DAR(Detailed Accident Report) was filed by the IO of the case which stated that the driver had absconded and, therefore, could not

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produce the driving licence. It is important to note that the driver of the offending vehicle had absconded after the accident. As per the learned counsel for the Appellant and also the police report, he was declared a proclaimed offender and could not be arrested so far in the criminal case which was registered against him. Simply, because the driver had absconded, it could not be inferred that the driver did not possess a valid and effective driving licence to drive the RTV involved in the accident so as to entitle the Appellant Insurance Company to avoid the contract of insurance.

6. Admittedly, no notice under Order 12 Rule 8 CPC was served upon the owner to produce the driving licence of the driver. In fact, there were other cases filed by the other victims wherein the copy of the driving licence was produced by the owner when he was issued a notice under Order 12 Rule 8 CPC. Even if, I do not take cognizance of the production of copy of the driving licence in those cases, the fact remains that the Appellant Insurance Company failed to discharge the initial onus to prove that there was a conscious and wilful breach of the terms and conditions of the policy on the part of the insured. The Appellant, therefore, cannot avoid the contract of insurance.
7. During the course of arguments, a legal question was raised by the learned counsel for the Appellant Insurance Company. It is stated that carrying capacity of the insured vehicle RTV No.DL-1VA-1494 as per registration certificate (Ex.R3W1/C) placed on record was 15. It is urged that more than 21 passengers were travelling in the insured vehicle at the time of the accident and 21 of them suffered injuries as the RTV capsized on account of rash and negligent driving. As many as 21 Claim Petitions were filed in respect of this accident. It is urged that the Appellant was

liable to pay the compensation only in respect of 15 victims and the compensation of 15 victims was to be distributed on pro rata basis by the Court amongst all the 21 victims and rest of the compensation shall be payable by the owner and the driver of the vehicle.

8. I tend to agree with the learned counsel for the Appellant Insurance Company. This question was directly dealt with by the Supreme Court in *National Insurance Co. Ltd. v. Anjana Shyam & Ors.*, (2007) 7 SCC 445. In the said case, the bus had carrying capacity of 42 passengers for which it paid the premium. It was overloaded and was carrying 90 passengers. The bus fell off the road into a *nala* leading to death of 26 persons including the driver and injuring 63 other persons. The legal representatives of the deceased and the injured approached the Motor Accident Claims Tribunal claiming compensation under Section 166 of the Act. A contention was raised before the Claims Tribunal that it was a fundamental breach of the contract of Insurance and therefore, the Insurance Company could repudiate the policy and was not liable for the compensation that may be adjudged. The Claims Tribunal brushed aside the objection and passed the award. The Insurance Company filed 38 Appeals before the Himachal Pradesh High Court. The High Court held that overloading of a bus which had permit to ply on the route with only 42 passengers did not amount to violation of the route permit or any other law for which the State Govt. could be held to be contributory negligence and that the Insurance Company was liable to pay the amounts as awarded by the Claims Tribunal. The Insurance Company approached the Supreme Court where it was held that Insurance Company would be liable to pay compensation in respect of 42 awards passed for the highest amount which would be distributed amongst the injured/legal

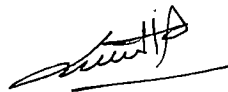
representatives of the deceased equitably. In the instant case, the carrying capacity was 15 and the vehicle was overloaded with 21 passengers.

9. My attention was drawn to an order dated 17.09.2011 passed by the Claims Tribunal whereby five Claims Petitions being (Suit Nos. 283/2011, 284/2011, 285/2011, 286/2011 and 341/2010) were dismissed for want of any evidence and one Petition being (Suit No.316/2010) was adjourned sine die. The learned counsel for the Appellant concedes that only fifteen Appeals have been filed.
10. Since compensation has been awarded in fifteen cases which is payable by the Appellant; there is no question of payment of compensation on pro rata basis.
11. MAC.APP. Nos. 672/2011, 673/2011, 674/2011 & 676/2011 are accordingly dismissed.

MAC.APP.221/2012

12. This Cross-Appeal has been filed by Suresh and Ram Naresh, two brothers of deceased Ramesh Chand. It is stated that the first Appellant was the younger brother of the deceased and was residing with the deceased in Delhi, whereas the second Appellant was elder brother of the deceased. Admittedly, both the Appellants were gainfully employed. The Claims Tribunal took $1/6^{\text{th}}$ of the deceased's income as his saving and applied the multiplier as per his age, that is, 13 and awarded a sum of ₹1,37,228/- towards loss to estate in favour of the Cross-Objectionists.
13. It is urged by the learned counsel for the Appellants that deceased Ramesh Chand was aged 48 years and was unmarried. Thus, the Claims Tribunal ought to have deducted only $1/3^{\text{rd}}$ of the deceased's income towards his personal and living expenses and awarded $2/3^{\text{rd}}$ of his income towards loss to estate.

14. I would not agree. Although, it was claimed that the deceased was operating from the footpath in Radio Market, Chandni Chowk, Delhi and was earning ₹10,000/- per month, in the absence of any evidence with regard to deceased's Ramesh Chand income, the Claims Tribunal awarded the compensation on the basis of minimum wages of an unskilled worker. Since deceased Ramesh Chand was held to be earning only minimum wages, he could not be expected to save much from the small sum of ₹5,278/- per month. In the circumstances, the award of a sum of ₹1,37,228/- is justified and is in consonance with the judgment of Division Bench of Karnataka High Court in *A.Manavalagan v. A.Krishnamurthy & Ors.*, 2005 ACJ 992 and this Court in *Keith Rowe v. Prashant Sagar & Ors.*, 2011 ACJ 1734.
15. The Cross Appeal (MAC.APP.221/2012) is devoid of any merit; the same is accordingly dismissed.
16. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company in each of the cases.
17. Pending Applications stand disposed of.


(G.P. MITTAL)
JUDGE

DECEMBER 12, 2012

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