

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

Date of decision: 18th December, 2012

+ **MAC. APP. 913/2012**

BHARTI AXA GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Advocate.

Versus

TANNU & ORS. Respondents

Through: Mr. R.K. Bachchan, Advocate for the
Respondent No.1.

Mr. Sushendra K. Chauhan, Advocate for
the Respondents No.2 & 3.

+ **MAC. APP. 914/2012**

BHARTI AXA GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Advocate.

Versus

PREETI & ORS. Respondents

Through: Mr. R.K. Bachchan, Advocate for the
Respondent No.1.

Mr. Sushendra K. Chauhan, Advocate for
the Respondents No.2 & 3.

+ **MAC. APP. 915/2012**

BHARTI AXA GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Advocate.

Versus

BALA & ORS. Respondents

Through: Mr. R.K. Bachchan, Advocate for the
Respondent No.1.

Mr. Sushendra K. Chauhan, Advocate for
the Respondents No.2 & 3.

+ **MAC. APP. 929/2012**

BHARTI AXA GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Seth, Advocate.

Versus

KAILASH CHAND SHARMA & ORS. Respondents
Through: Mr. R.K. Bachchan, Advocate for the
Respondent No.1.
Mr. Sushendra K. Chauhan, Advocate for
the Respondents No.2 & 3.

+ **MAC. APP. 930/2012**

BHARTI AXA GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Seth, Advocate.

Versus

MAMTA SHARMA & ORS. Respondents
Through: Mr. R.K. Bachchan, Advocate for the
Respondent No.1.
Mr. Sushendra K. Chauhan, Advocate for
the Respondents No.2 & 3.

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 19.05.2012 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby various amount of compensation were awarded in favour of the First Respondents (in all the Appeals) for having suffered injuries in a

motor vehicle accident which occurred on 03.04.2011.

2. Injuries in the case of Ms. Preeti, First Respondent (MAC.APP.914/2012) and in the case of Smt. Bala, First Respondent (MAC.APP.915/2012) were rather serious. Respondent in MAC.APP.914/2012 suffered multiple fractures mandible. She suffered Grade I mobility of second teeth of right lower jaw, Grade I mobility of sixth teeth of left lower jaw, fracture of left and right side of mandible and injuries on various other parts of the body. Similarly, Respondent Smt. Bala in MAC.APP.915/2012 suffered crush injuries on her second, third and fourth right toe, injuries on her shoulder. Her second and third toe had to be amputated on account of crush injuries. She was assessed with 16% disability in relation to her right lower limb. The injuries in case of other Claimants were not very serious. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of TSR No.DL-1RE-7538 which was being driven by the Respondent No.2 in rash and negligent manner at the time of the accident.
3. The Claimants were awarded various amount of compensation, which is tabulated hereunder for the sake of convenience:

S. No.	MAC. APP.No.	Suit No.	Name of the injured/ claimant	Amount of compensation awarded
1.	913/12	182/11	Tannu	₹15,000/-
2.	914/12	183/11	Preeti	₹72,750/-
3.	915/12	184/11	Bala	₹1,89,900/-
4.	929/12	181/11	Kailash Chand Sharma	₹31,658/-
5.	930/12	185/11	Mamta Sharma	₹15,491/-

4. There is twin challenge to the impugned judgment. First, there was no negligence on the part of the Respondent No.2 in driving the TSR No.DL-1RE-7538. The accident was caused on account of rash and negligent driving of a Scorpio Car which fled from the spot after the accident. Second, the carrying capacity of the TSR involved in the accident and insured with the Appellant was only 3+1, that is, three passengers plus one driver. Five passengers were travelling in the TSR. The Appellant was liable to pay the compensation only in respect of three passengers which could be distributed on pro rata basis amongst the five Claimants. Reliance is placed on report of the Supreme Court in *National Insurance Co. Ltd. v. Anjana Shyam & Ors.*, (2007) 7 SCC 445.
5. On the other hand, the learned counsel for the First Respondent supports the judgment. He states that the accident was caused only on account of rash and negligent driving of the TSR by its driver, Respondent No.2 (Hoshiyar Singh). No other vehicle was involved in the accident. The story of any Scorpio Car being involved in the accident was introduced by the TSR driver to save his own skin. It is urged that apart from three adults, two minor children were travelling in the TSR. Thus, it cannot be said that the Insurance Company can avoid its liability to pay compensation for five Respondents. The learned counsel for the First Respondent, on instructions from the First Respondent in MAC.APP.929/2012 states that if the Court comes to the conclusion that the compensation is to be paid by the Insurance Company only on pro rata basis, the compensation in MAC.APP.929/2012 may be ordered to be paid by the driver and the owner of the vehicle instead of pro rata compensation in all the Appeals because all the Claimants(First

Respondent in all the Appeals) are the husband, wife, husband's mother and two children.

6. While dealing with the issue of negligence, the Claims Tribunal held as under:

“PW1 has reiterated the stand of petition and stated that he alongwith his family including his, mother and two minor daughters were travelling in the offending vehicle. The offending vehicle was being driven by respondent no.1 in rash and negligent manner therefore, at the red light it turned turtle causing grievous injuries to the occupants. They were taken to Hindu Rao Hospital where FIR was lodged and MLC were prepared.

PW2 @ 3 have reiterated the stand of their petition and supported the case of PW1.

Respondent no.1 & 2 have denied negligence of respondent no.1 in the accident in question but have not cross-examined any of the petitioner's witness.

As per FIR, a case U/s 279/337 IPC had been registered for the accident in question and it is recorded therein that the accident was caused due to an unknown Scorpio vehicle. The FIR was, however, lodged on the statement of respondent no.1. As per MLC, petitioners had been brought to the hospital with injuries suffered in the alleged road traffic accident. As per mechanical inspection report, offending vehicle had extensive damaged parts on its front, rear and left side.

The case of the petitioner is that respondent no.1 was driving the offending vehicle in rash and negligent manner while crossing the red light in order to save collusion with another vehicle had applied brakes of the offending vehicle resulting in overturning of the vehicle and had also stated that the said other vehicle was neither negligent nor on the wrong side.

Respondent no.1 has stated that the accident was caused as another vehicle i.e. Scorpio was being driven in rash and negligent manner and in order to avoid the accident he had applied brakes and therefore, the accident had occurred. But he did not elaborate

as to how the second vehicle was negligent or responsible for the accident in question. Therefore, it was for respondent no.1 to explain his innocence and negligence of the second vehicle.

The admitted facts in respect of accident in question are that respondent no.1 had applied brakes causing his vehicle to overturn. The mode of overturning of the offending vehicle itself therefore, suggests that respondent no.1 was driving at speed which could not be controlled by him therefore, application of sudden brakes resulted in overturning of his vehicle. Respondent no.1 while driving the vehicle should have been cautious and should have taken care to avoid any untoward incident, but the manner of accident shows that he was completely unprepared.”

7. The learned counsel for the Appellant heavily relies on the DAR(Detailed Accident Report) wherein the present accident has been described as a hit and run case. In fact, the FIR was recorded on the statement of Hoshiyar Singh, driver of the TSR who stated that on 03.04.2011 at 11:00 pm, he was proceeding in his TSR No.DL-1RE-7538 from Sultan Puri to Mansarovar Park, Shahdara. When he reached traffic light Shashtri Nagar, Sarai Rohilla, a Scorpio Car came from Anand Parbat flyover. The Car was being driven in a rash and negligent manner by an unknown person. The Car struck against his TSR, as a result of which the TSR capsized. Both Kailash Chand Sharma and Smt. Mamta Sharma entered the witness box as PW1 and PW2. There is absolutely no mention of even the initials of the Scorpio allegedly involved in the accident. The TSR driver was completely silent as to which portion of the Scorpio Car struck against the TSR. Although, Hoshiyar Singh also entered the witness box as RW1, but here again he was completely silent as to the precise manner of the accident and which portion of the Scorpio struck against which portion of the TSR. It is true that five injured persons (which include two minor children) did not pursue the matter with the

police for registration of the case against the TSR driver. In fact, they were not even questioned on this aspect in their cross-examination. In the facts and circumstance, I do not find any reason to disbelieve the testimonies of PWs 1 and 2 who were categorical about the manner of the accident. In the facts and circumstances, the Claims Tribunal's finding that the accident was caused on account of rash and negligent of TSR by its driver, Respondent No.2 cannot be faulted.

8. Quantum of compensation is not disputed during the hearing of the Appeal. The learned counsel for the Appellant, however, urges that since only three passengers could be carried in the TSR, the Appellant was liable to pay the compensation only in respect of three passengers.
9. Overloading of a vehicle, obviously, will not amount to breach of the terms and conditions of the policy as envisaged under Section 149(2)(a) of the Motor Vehicles Act, 1988(the Act). But, the Appellant would be liable to pay compensation only in respect of three passengers as it is not disputed and is also proved from the registration certificate and the permit of the TSR involved in the accident that apart from the driver, three passengers could be carried in the TSR. A perusal of the FIR and PW2's testimony shows that the two minor children were grown up, that is, 14 years and 11 years. The minor children were not such who could be carried in the laps of the parents. They needed similar space as in case of an adult. The Insurance Company thus would be liable to pay the compensation only in respect of three passengers.
10. A similar contention came up for consideration before the Supreme Court in *Anjana Shyam*. 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.

11. A perusal of these five connected Appeals reveals that Respondent Kailash Chand, his wife Mamta Sharma, Kailash Chand's mother Bala and Kailash and Mamta's children Preeti and Tannu @ Rekha were travelling in the TSR who had suffered injuries and have been awarded compensation. The compensation awarded in MAC.APP.913/2012 (Suit No.182/2011) and MAC.APP.930/2012 (Suit No.185/2011) was the lowest, that is ₹15,000/- and ₹15,491/- respectively totalling to ₹30,491/-. The Appellant Insurance Company is not liable to pay this amount of ₹30,491/- and the compensation payable to other three Claimants is to be

apportioned equitably amongst the five Claimants. Since all the Claimants are very close relations and in view of the statement made by the learned counsel for the First Respondents (in all the Appeals), the amount of ₹30,491/- is reduced from the compensation payable to First Respondent Kailash Chand in MAC.APP.929/2012.

12. It is directed that the Insurance Company shall pay all the compensation except the sum of ₹30,491/- which shall be reduced from the compensation of Kailash Chand Sharma. Thus, the Insurance Company shall pay only a sum of ₹1,167/- to Respondent Kailash Chand Sharma. Rest of the compensation shall be payable by the Respondents No.2 and 3, who are the driver and owner of the offending vehicle jointly and severally.
13. The Respondents No.2 and 3 are directed to deposit the amount of ₹30,491/- along with interest @ 9% per annum as awarded by the Claims Tribunal within 30 days.
14. The compensation of ₹30,491/- alongwith proportionate interest deposited in MAC.APP.929/2012 shall be refunded to the Appellant Insurance Company. Rest of the compensation shall be disbursed in favour of all the Claimants in terms of orders passed by the Claims Tribunal.
15. The Appeals are allowed in above terms.
16. Statutory amount of ₹25,000/-, if any, in each of the Appeal shall be refunded to the Appellant Insurance Company.
17. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 18, 2012/pst