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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12th December, 2012

+ **MAC. APP. 1084/2011**

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

Versus

HITESH NEGI & ORS. Respondents
Through: None

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 disposed of in terms of the judgment passed today in MAC.APP.1081/2011 titled '*RELIANCE GENERAL INSURANCE CO. LTD. v. ANKIT MAHESHWARI & ORS.*'
2. For detailed order, please see the above mentioned judgment.


(G.P. MITTAL)
JUDGE

DECEMBER 12, 2012
pst

\$ 5, 6, 7, 8, 9, 10, 11, 18, 19 & 20

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

Date of decision: 12th December, 2012

+ **MAC. APP. 1081/2011**

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

Versus

ANKIT MAHESHWARI & ORS. Respondents
Through: Ms. Girija Samai, Advocate for
Respondent No.1.

+ **MAC. APP. 1082/2011**

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

Versus

AJAY PAL SINGH & ORS. Respondents
Through: None

+ **MAC. APP. 1083/2011**

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

Versus

BIJENDER SINGH & ORS. Respondents
Through: None

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+ **MAC. APP. 1084/2011**

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

Versus

HITESH NEGI & ORS. Respondents
Through: None

+ **MAC. APP. 1085/2011**

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

Versus

SHOUKET ALI & ORS. Respondents
Through: None

+ **MAC. APP. 1086/2011**

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

Versus

MASTER VIKRAM & ORS. Respondents
Through: None

+ **MAC. APP. 1094/2011**

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

Versus

DEV MITRA TIWARI & ORS. Respondents
Through: None

+ **MAC. APP. 1095/2011**

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

Versus

MASTER GAURAV PATWAL & ORS. Respondents
Through: None

+ **MAC. APP. 1096/2011**

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

Versus

SAROJ & ORS. Respondents
Through: None

+ **MAC. APP. 3/2012**

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

Versus

RAJ PAUL @ RAJJU & ORS. Respondents
Through: None

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These ten Appeals arise out of a common judgment dated 20.09.2011

passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation as tabulated hereinunder was awarded in favour of the Respondent/Respondents(Claimant/Claimants) for having suffered injuries in a motor vehicle accident which occurred on 03.02.2010 by the Claims Tribunal:-

S. No.	Petition No.	MAC.APP.No.	Name of the Injured/Claimant	Amount of Compensation
1.	403/2010	1081/2011	Ankit Maheshwari	₹67,500/-
2.	342/2010	1082/2011	Ajay Pal Singh	₹1,06,100/-
3.	343/2010	1083/2011	Bijender Singh	₹25,690/-
4.	345/2010	1084/2011	Hitesh Negi	₹15,000/-
5.	318/2010	1085/2011	Shouket Ali	₹15,000/-
6.	346/2010	1086/2011	Master Vikram Singh Gosain	₹15,000/-
7.	73/2011	1094/2011	Dev Mitra and Tiwari and Durgesh Tiwari	₹3,90,000/-
8.	344/2010	1095/2011	Master Gaurav Patwal	₹15,000/-
9.	317/2010	1096/2011	Saroj	₹15,000/-
10.	242/2010	3/2012	Rajpaul @ Rajju	₹3,75,000/-

- The only ground urged on behalf of the Appellant Insurance Company is that the Respondent Riyazuddin (owner) committed a breach of the terms and conditions of the policy by permitting the driver(Amit @ Nata) to drive RTV No.DL-1VA-1494 without an effective and valid driving licence and thus the Appellant Insurance Company was entitled to avoid the contract of insurance. It is urged that the Appellant should at least be granted recovery rights.

3. I have before me the Trial Court record. The learned counsel for the Appellant relies on the testimony of Rakesh Sonkar (R3W1) to emphasize that a notice dated 10.08.2011 (Ex.R3W1/A) under Order 12 Rule 8 CPC issued on behalf of the Appellant was duly served upon the owner and the driver. The Insurance Company did whatever was in its power and discharged the initial onus placed on it to prove breach of the terms and conditions of the policy. The onus shifted on the owner to prove that the driver possessed a valid and effective driving licence.
4. It is urged by the learned counsel for the Appellant that the Respondent Amit @ Nata (driver of the insured vehicle) absconded after the accident and as per the DAR (Detailed Accident Report), he did not possess any driving licence. This fact coupled with service of the notice was sufficient for the Claims Tribunal to hold that the owner committed breach of the terms and conditions of the policy. It is urged that the Claims Tribunal erred in not even granting recovery rights despite the evidence adduced by the Appellant.
5. In the written statement filed by the Appellant, only a vague and general plea was taken that in case the driver did not possess a valid and effective driving licence, the Insurance Company shall not be liable to indemnify the insured. The owner was never informed by the Appellant to produce the driving licence except by a notice dated 10.08.2011. In pursuance of the said notice, the owner appeared in the witness box as R2W1. He testified that the driver(Amit @ Nata) possessed a valid driving licence to drive a RTV. He deposed that the driver was a professional and competent driver and he had seen his driving licence, copy of which was also placed on record. Thus, as soon as the owner was informed about the alleged breach of the terms and conditions of the policy, he came

forward and produced the copy of the driving licence.

6. It is urged by the learned counsel for the Appellant that the driving licence ought to have been got proved by the owner by producing a witness from the concerned licensing authority.
7. I would not agree with the learned counsel. The onus to prove breach of the terms of the policy is on the insurer. Once the owner stated that he took the driving test and was satisfied about the driving licence, that was enough. Moreover, in the instant case, the Appellant Insurance Company did not even try to verify the driving licence No.025390 issued by District Transport Officer, Bhind(M.P.). The licence was valid from 12.05.2008 to 11.05.2011, which covered the period of accident. In the circumstances; the Appellant Insurance Company is not entitled to complain about the breach of the terms and conditions of the policy.
8. 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.
9. 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.

10. 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

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adjourned sine die. The learned counsel for the Appellant concedes that only fifteen Appeals have been filed. 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. The Appeals are accordingly dismissed.
12. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company in each of the cases.
13. Pending Applications stand disposed of.


(G.P. MITTAL)
JUDGE

DECEMBER 12, 2012

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