THE HIGH COURT OF TRIPURA
A G A R T A L A

MAC APP. NO.84 OF 2009

Sri Manik Suklabaidya,
S/O. Sri Jagannath Suklabaidya,
Resident of Santipur, P.S.-Pecharthal,
Kanchanpur, Distt.-North Tripura.

..... **Appellant**.

– V e r s u s –

1. Smt. Rupabati Chakma,
W/O. Shri Nayan Kr. Chakma,
Resident of Baghaicherra,
P.S.-Pecharthal,
Kanchanpur, Distt.-North Tripura.

2. Shri Shyamal Suklabaidya,
S/O. Shri Khitendra Suklabaidya,
Resident of Santipur, P.S.-Pecharthal,
Kanchanpur, Distt.-North Tripura.
[Driver of vehicle No.TR-02-2558 (Commander Jeep)].

3. Oriental Insurance Company Ltd.,
Dharmanagar Branch, Rajbari,
P.O. & P.S.-Dharmanagar,
District-North Tripura.
Represented by its Divisional Manager.
[Insurer of vehicle No.TR-02-2558 (Commander Jeep)].

..... **Respondents**.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. S. Lodh, Advocate.
For the respondent No.1	: Mr. T.D. Majumder, Advocate.
For the respondent No.3	: Mr. P.K. Debnath, Advocate.
Date of hearing and delivery of judgment and order.	: 02.03.2015.
Whether fit for reporting	: **YES**.

JUDGMENT & ORDER (ORAL)

In this appeal filed by the owner, the short question which has been raised is whether the Tribunal could have directed that the Insurance Company after payment of the amount would be entitled to recover the same from the owner.

2. The undisputed facts are that the vehicle in question which was insured with the Insurance Company is a commander jeep. The registration certificate of the vehicle has been exhibited and it shows that the capacity of the vehicle inclusive of driver is 9 + 1, i.e. 9 passengers and one driver total 10 persons. According to the FIR lodged by one of the injured persons, there were 18 passengers other than the driver travelling in the commander jeep.

3. The question is what will be the liability of the Insurance Company in such a situation. This question is no longer *res integra*. The Apex Court in ***National Insurance Co. Ltd. v. Anjana Shyam & others, [2007 AIR SCW 5237]*** after discussing the entire law held as follows:-

> *"**16**. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper*

course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders *against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately."*

4. Basically what the Apex Court held was that if there is violation of the policy inasmuch as there are more passengers being carried than permitted, then it is impossible to decide which passenger was the overloaded passenger and, therefore, the Insurance Company must satisfy the awards which grant maximum compensation in respect of the liability of passengers permitted to be carried under the vehicle and if there are more claims than that, then the owner will have to pay the amount. Therefore, if in the present case, 18 claim petitions had been filed and awards had been passed against the owner in all the 18 claim petitions, the Insurance Company could be held liable to pay the 9 highest awards relating to the passengers and the remaining 9 lowest awards would be paid by the owner.

5. Therefore, this appeal is allowed and the award passed by the learned Tribunal is modified with the following directions:-

(i) That, the Insurance Company, if it wants to recover any amount from the owner, must approach the Claims Tribunal and show that more than 9 claim petitions in respect of passengers were filed;

(ii) If more than 9 awards in respect of passengers have been passed, then the Insurance Company shall be liable to satisfy the 9 awards which are of highest value and the remaining awards, if any, will have to be satisfied by the owner;

(iii) Obviously, this cannot be done without hearing the parties and the Insurance Company, if it is so advised, can file petition in the nature of execution proceedings before the Motor Accident Claims Tribunal, if so advised, and the Tribunal after hearing the owner shall decide the question strictly in accordance with law as laid down hereinabove;

(iv) The claimants shall not be summoned if such a dispute arises because they have no concern with the dispute *inter se* the insurer and the insured owner.

6. Send down the lower court records forthwith.

CHIEF JUSTICE