

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

Judgment reserved on: 29.10.2015
% Judgment delivered on: 25.01.2016

+ **WP(C) 1867/2012**

NAMRATA SINGH & ORS. Petitioners

Versus

DIRECTOR GENERAL CIVIL AVIATION
(DGCA) & ORS. Respondents

WP(C) 1880/2012

NIRMAL & ANR. Petitioners

Versus

DIRECTOR GENERAL CIVIL AVIATION
(DGCA) & ORS. Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Arun Khatri & Mr Anshul Sharma, Advocates

For the Respondents: Mr Arun Bhardwaj, CGSC with Ms Gunjan Bansal, Adv. for R-1 & 2.

Mr Ratan K. Singh, Mr. D.D. Singh, Mr Raghvendra Bajaj, Mr Navdeep Singh, Mr Vipul Agrawal, Mr Udit Chauhan, Mr Vinay Vats & Mr Raghav Alok, Advocates for R- 3 & 4.
Mr A.K. De, Mr Rajesh Dwivedi & Mr Zahid Ali, Advocates for R-5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

Prefatory Facts :

1. These, are two writ petitions, filed by the legal representatives of, one, Capt. Harpreet Singh Sekhon and Capt. Manjeet Kataria. Capt. Harpreet Singh Sekhon and Capt. Manjeet Kataria died in an air crash, on

25.05.2011. The legal representatives claim various reliefs including compensation and damages for loss of life.

1.1 The first writ petition, in order of seriatum, being: WP(C) 1867/2012 was initially instituted by the wife (i.e. petitioner no.1) and the minor child (i.e. petitioner no.2) of Capt. Harpreet Singh Sekhon; to which, his mother (i.e. Mrs Jagjit Kaur) was added as a party-respondent no.6 vide order dated 11.12.2013, passed in CM No. 1260/2013, and thereafter, transposed as petitioner no.3 vide order dated 22.05.2015. The transposition of Mrs Jagjit Kaur was not opposed by petitioner no.1 either in her own individual capacity or in her the capacity as the guardian of petitioner no.2.

1.2 In so far as the Second writ petition is concerned, being: WP(C) 1880/2012, it has been instituted by the mother (i.e. petitioner no.1) and the unmarried brother (i.e. petitioner no.2) of Late Capt. Manjeet Kataria.

2. These writ petitions were sought to be amended only to the extent of seeking relief qua respondent no.5 i.e. United India Insurance Company Ltd. (hereafter referred to as UICL). Amendments to both writ petitions were allowed, albeit vide two separate orders. Amendment to WP(C) 1880/2012 was permitted vide order dated 09.03.2015. In so far as WP(C) 1867/2012 was concerned, amendment was allowed on 29.05.2015. Since, the amendment was directed towards UICL, the said entity was permitted to file an additional counter affidavit to the amended writ petition. The UICL has, instead, only filed an additional affidavit, that too, in WP(C) 1880/2012.

3. I may also note that respondent no.1 i.e. the Director General of Civil Aviation (in short DGCA) and respondent no.2, effectively, the Union of India, which is sued via the concerned ministry, had initially

indicated, in the hearing held on 04.10.2012, that they did not wish to file a counter affidavit; a position which was revisited after it was indicated in the hearing held on 20.08.2015 that they should in the very least file a written submission in the matter. Accordingly, upon a counter affidavit having been filed on behalf of DGCA, the same was permitted to be taken on record vide order dated 28.09.2015, having regard to the nature of the matter. With the counter affidavit, the DGCA, placed on record certain documents which were not brought on record by the other respondents including UICL.

3.1 In so far as respondent no. 3, 4 & 5 are concerned, they have filed their counter affidavits. As a matter of fact, respondent no. 4 also filed an additional affidavit dated 26.07.2013, which effectively brought on record certain crucial documents, to which I will be making a reference during the course of my deliberation. The petitioners have filed their rejoinder(s) qua the stand taken in the counter affidavits.

3.2 This is in so far as the main claim in the petition, and the state of the pleading is concerned.

BACKGROUND

4. The bare bones of the case are as follows:

4.1 On 25.05.2011, the services of respondent no.3 were requisitioned for enabling a medical evacuation of a critically ill patient in Patna. Respondent no.3 thus, lent its aircraft for the said purpose, albeit, on hire charges. The type and model of the aircraft, deployed for this purpose, was a Pilatus: PC-12/45, bearing the registration number: VT-ACF (in short the Aircraft).

4.2 On the aforementioned date, the Aircraft took off from Delhi, with a crew of two pilots, a medical team comprising of two doctors and a

male nurse. The flight to Patna was uneventful. On return flight, the patient, and one attendant, were taken on board.

4.3 Evidently, the Aircraft encountered a thunderstorm on its approach to Delhi, at a point in time when, it was approximately ten minutes away from landing. The Aircraft crashed over Parvatia Colony in Faridabad. The resultant crash, led to the death of all seven occupants on board the aircraft, which included the two crew members i.e. the pilot and the co-pilot.

4.4 The crash, also, resulted in the death of three persons on the ground, and damage to immovable property i.e. house nos. 1254, 1253 and 1255. The first two properties suffered extensive damage, while the third, suffered minor damages. The Aircraft was completely wrecked.

4.5 Post, the crash of the Aircraft, the DGCA, set up a Committee of Inquiry (in short the Committee). The Committee, inter alia, held vide its report that: "*...the probable cause of the accident could be attributed to the departure of the aircraft from controlled flight due to an external weather related phenomenon, mishandling of controls, spatial disorientation or a combination of the three....*".

4.6 This apart there were recommendations made to the DGCA and the UOI as well, to which, I will make a reference towards the end of my discussion. as this is an aspect relating to public weal which require issuance of separate directions.

4.6 The petitioners, in the meanwhile, triggered their claim for compensation by sending legal notices to the respondents herein. In so far as petitioners in WP(C) 1867/2012 are concerned, they sent a legal notice on 23.08.2011, followed by an email dated 28.12.2011. Both, the legal notice and the e-mail were directed against respondent no.3. The

petitioners in the other writ petition i.e. WP(C) 1880/2012 sent the legal notice on 03.10.2011. The legal notice was directed against all respondents. While no reply was received to either the legal notice dated 23.08.2011 or the e-mail dated 28.12.2011, which were sent by petitioners in WP(C) 1867/2012, a reply was sent by respondent no. 3 and 4, which was dated 19.10.2011 to the legal notice dated 03.10.2011, sent by petitioners in WP(C) 1880/2012. By virtue of this response, respondent no.3 denied its liability to pay an amount more than that which was deposited with the Workmen Compensation Commissioner. It was indicated that a sum of Rs. 7,00,840/- was deposited, after adjusting a sum of Rs. 1.90 lacs, apparently, paid in cash till October, 2011 to petitioner no.2 i.e. Mr Amanjeet Kataria in WP(C) No. 1880/2012. The respondent no.3 though accepted the fact that they had received monies towards damage caused to the aircraft in the accident. The exact amount received, was, however, not disclosed. Pertinently, this information was obtained through RTI route via a third party. In response dated 14.02.2012 to an RTI query, UICL disclosed that it had paid to respondent no.3 on 14.07.2011 a sum of Rs. 13,49,90,000/-.

5. It is in this background, that the aforementioned writ petitions were moved, in this court, on 30.03.2012. Notices were issued in the writ petition, and thereupon, as indicated above, pleadings stand completed. Arguments on behalf of the petitioners have been advanced by Mr. Khatri, while DGCA and UOI have been represented by Mr. Bhardwaj. On behalf of respondent no.3 and 4 arguments were advanced by Mr. D.D. Singh, followed by Mr Ratan Singh. UICL was represented by Mr. De.

Submissions of Counsels

6. Mr Khatri, on behalf of the petitioners, made the following broad submissions:

(i) The DGCA being the regulator qua the aviation industry, is empowered under powers under Rule 133A of the Aircraft Rules, 1937 (in short the 1937 Rules) to issue, what is, ubiquitously known as Civil Aviation Requirement (in short the CAR) vis-a-vis the aircraft owners.

(ii) In exercise of its powers on 01.06.2010, a CAR was issued which, under clause 10.10 appearing in Section 3, Air Transport Series C, Part III, Issue II, required an aircraft operator to maintain current insurance for an amount adequate to cover its liability, inter alia, towards crew.

(iii) The provisions made in CAR being the minimum requirements for grant of permit, to operate Non-Scheduled Air Transport Services, any violation thereto, should lead to cancellation of the Non-Scheduled Operator's Permit (NSOP). The apparent failure to insure the pilot and the co-pilot, which was, otherwise mandatory under clause 10.10 of CAR, should lead to necessary consequences i.e. cancellation of NSOP. This fact was evident upon perusal of the stand taken by the UICL in its pleadings. UICL has specifically averred that respondent no.3 had obtained only a Hull All Risk Policy, which insured the aircraft and covered third party liability, including passengers, sans the crew. As per UCIL, the legal liability towards the passengers was limited to Rs. 50 per passenger; the total cover being limited to Rs. 270 crores, with a maximum liability qua damage to the Aircraft being restricted to Rs. 13.50 cores.

(iv) The statutory minimum compensation for death in an air crash, as per Montreal Convention is 1 lac Special Drawing Rights (in short SDRs). For this purpose, reliance was placed on Rule 21(1) of the Third

Schedule to the Carriage by Air Act, 1972 (in short the 1972 Act).

(v) Furthermore, if it was a case of willful misconduct, the liability, is unlimited. In this case, since, respondent no. 3 and 4 failed to maintain an insurance cover of 1 lac SDRs, their liability is unlimited over and above the statutory minimum of 1 lac SDRs. Reliance in this regard was placed on Rule 17(1) of the Third Schedule to the 1972 Act.

(vi) Reference was also made to Rule 50 of Chapter VI of the Third Schedule to the 1972 Act, based on which, it was submitted, that it was the State's obligation to ensure that carriers maintained adequate insurance to cover their liability under the provisions of the 1937 Rules.

(vii) Since, India was signatory to the Montreal Convention, which was signed in May, 1999 and came into force on 30.06.2009, the Third Schedule to the 1972 Act would be applicable. For this purpose, reliance was placed on Section 4A of the 1972 Act.

(viii) The amendments brought about by virtue of notification dated 17.01.2014 to the Third Schedule, will have no application, as it cannot apply to an accident which occurred on 25.05.2011.

(ix) Both DGCA and the UOI have failed to discharge their regulatory functions, in as much as they failed to ensure that respondent no. 3 and 4 maintained adequate coverage which was a pre-requisite for issuance of a NSOP.

7. Mr Bhardwaj, on behalf of respondent no.1, accepted the fact that NSOP holder had to comply with clause 10.10 of the CAR, referred to by Mr Khatri. Mr Bhardwaj further submitted that the DGCA had carried out a verification while renewing the NSOP, prior to the date of the accident, and found that respondent no.3 had obtained an insurance policy which covered the crew. For this purpose, learned counsel relied upon

the document appended as Annexure B to its counter affidavit, which made a specific endorsement with regard to the inclusion of the crew.

7.1 Furthermore, the learned counsel contended that in terms of Section 5 and Rule 17 of First, Second and Third Schedule of the 1972 Act, the air carrier/ operator, was liable for damage sustained in the event of death or wounding of a passenger.

7.2 As per Mr Bhardwaj, the crew were thus, covered under the policy dated 16.01.2011, issued by UICL. Mr Bhardwaj, in no uncertain terms, submitted that the DGCA's reading of the insurance policy, was that if, the endorsement made at the instance of the insured (i.e. respondent no.3) is read along with the proposal, there can be no ambiguity that the crew were covered under the insurance policy issued by the UICL, as was the requirement under clause 10.10 of the CAR.

8. Mr D.D. Singh and Mr. Ratan Singh, on behalf of respondent no. 3 and 4 argued that the liability of the employer was restricted to compensation stipulated under the Employee's Compensation Act, 1923 (in short the 1923 Act). The respondent no.3, having deposited the requisite compensation with the concerned authority, under the said Act, no further liability could be imposed upon it. The crew, were to be treated as workmen under the said Act, and therefore, their legal representatives i.e. petitioners, were not entitled to compensation greater than that which is provided under the statute. To bring home the point that the pilots were workmen, reliance was placed on the following judgements: (i) Judgement dated 23.02.2012, passed in LPA No. 3/2009, titled: ***Capt. R. Khosla vs Jet Lite India Ltd 2012 SCC Online Del. 1997***; (ii) ***Mathur Aviation vs Lt. Governor & Ors. 1978 (36) FLR 7 (Del.)***; (iii) ***Cedric D'Silva vs Union of India 2008 (I) LLJ 483 (Bom)***; and (iv)

judgement dated 12.02.2013, passed in WP(C) No. 664/2010, titled: ***King Airways vs Capt. Pritam Singh.***

8.1 The learned counsels further submitted that respondent no.3 had submitted a proposal for seeking an insurance cover for the two crew members i.e. the pilot and the co-pilot for a sum of Rs. 50 lacs each. UICL, based on its proposal, had issued the policy. Therefore, if at all, the liability, if any, was that of UICL.

8.2 Even though the maximum compensation that was payable under the 1972 Act, was Rs. 7.5 lacs, and that, which was payable under the 1923 Act was Rs. 9 lacs, respondent no.3 had got an insurance cover for the pilots for a sum of Rs. 50 lacs each. To demonstrate that the pilots were covered, the learned counsels relied upon the final survey report dated 15.11.2011, issued by the surveyor appointed by the UICL. It was submitted that a binding contract came into existence on the basis of the proposal form submitted by respondent no.3, which was accepted by UICL. Reliance in this behalf was placed on the judgement of the National Consumer Disputes Redressal Commission dated 19.03.2007, passed in Original Petition No. 375/1997, in the case titled: ***Orient Treasures Private Ltd. vs United India Insurance Co. Ltd.***

8.3 It was further submitted that the ambiguity, if any, as contended by UICL, could only go against it, as an insurance policy is, like any other commercial contract, which had to be construed as "contra-proferentem" i.e. against the maker of the document in the event of any ambiguity or doubt arising in ascertainment of its scope and effect. In this behalf, reference was also made to the judgement of the Supreme Court in the case of: ***General Assurance Society Ltd. vs Chandumull Jain & Anr. 1966 (3) SCR 500*** and ***United India Insurance Co. Ltd. vs Pushpalaya***

Printers (2004) 3 SCC 694. This legal submission was sought to be supported by placing reliance on Reference on paragraph 70, under the heading "Formation of Contract", appearing in Halsbury (Volume 25: Insurance; p.57)

9. Mr De, who appeared for the UICL, contended that the crew were not covered under the insurance policy. The learned counsel, however, accepted the fact that the compensation had been paid to respondent no.3 for damage to the aircraft. It was affirmed that a sum of Rs. 13,49,90,000/- had been paid to respondent no.3 in that behalf. Learned counsel contended that no direction whatsoever could be issued to UICL to pay Rs. 50 lacs each, on account of death of the crew members, in view of the fact that the policy did not cover the crew as contended.

9.1 Mr De further submitted that the petitioners were entitled to compensation either under the 1923 Act or the 1972 Act. Learned counsel relied upon the notification dated 30.03.1973, issued under the 1972 Act, to contend that the maximum compensation which was payable under the 1972 Act, was 7.50 lacs, which, according to him, had been enhanced vide notification dated 17.01.2014 to Rs. 20 lacs.

9.2 Learned counsel stated that since respondent no.3 had already paid more than Rs. 7.50 lacs, no further monies were payable to the petitioners. Learned counsel also made it a point to contend that the issue as to whether or not the pilots were covered under the extant policy, was a disputed question of fact, which could not be adjudicated upon by this court, while exercising writ jurisdiction and, that too, on behalf of the petitioners, who had no privity of contract with UICL.

REASONS

10. Having heard the learned counsel for the parties and perused the

record, according to me, the principal issues which arise for consideration are as follows :-

- (i). Whether or not the petitioners are entitled to compensation?
- (ii). If, the petitioners are found to be entitled to compensation, can they claim compensation under the 1972 Act?
- (iii). In case the answer to issue no.(ii) is in the affirmative, what would be the quantum of such compensation?
- (iv). Are the petitioners entitled to compensation, over and above that which is provided in the 1972 Act by virtue of their employment contract, with respondent no.3?
- (v). In the event the answer to issue no.(iv) is in the affirmative, is respondent no.3's liability towards the petitioners covered under the Insurance Contract executed between itself and UICL?
- (vi). If, the answer to issue no.(v) is in the affirmative, to what extent would UICL be liable?
- (vii). What should be the final relief, if any, in the instant case?

Issue no.(i)

11. The fact that the pilot and the co-pilot died in an air crash on 25.05.2011, is not disputed by any of the respondents. The pilot, Capt. Harpreet Singh Sekhon at the time of his death, was aged 29 years, while the Co-pilot, Capt. Manjeet Kataria, was aged 21 years. On the date of his death, Capt. Harpreet Singh Sekhon was drawing a salary in the sum of Rs. 2,00,000/- alongwith perquisites, while Mr. Manjeet Kataria was drawing a salary in the sum of Rs. 40,000/- alongwith perquisites.

11.1 That their death resulted in both pecuniary and non-pecuniary injury and loss to the members of their family is also not disputed by any of the respondents.

11.2 The fact that the petitioners are close relatives of the deceased is also not disputed before me, by any of the respondents.

11.3 Therefore, according to me, in so far as issue no.(i) is concerned, it clearly, has to be answered in favour of the petitioners. The petitioners are entitled to compensation. The question is: how much and by whom.

Issue no.(ii)

11.4 Which brings me to the next issue, i.e. issue no.(ii). The 1972 Act was preceded by the Carriage by Air Act, 1934 (in short, 1934 Act). The 1934 Act preceded by the Warsaw Convention dated 12.10.1929. The 1972 Act was thus, enacted to bring about unification of Rules pertaining to international carriage by air as provided in the Warsaw Convention and Hague Protocol. The Warsaw Convention was amended by the Hague Protocol on 28.09.1955. This brought about the enactment of the 1972 Act which, replaced the 1934 Act.

11.5 On its own, the 1934 Act applied only to international carriage of goods and passengers. The position was no different qua the 1972 Act. Both the 1934 Act and the 1972 Act were made applicable to domestic carriage, with the issuance of necessary notification by the Government of India (GOI). In so far as the 1934 Act was concerned, a notification to that effect was issued on 17.12.1963.

11.6 Similarly, after the enactment of the 1972 Act, the Government of India, in exercise of powers under Section 8(2) of the said Act, issued a notification dated 30.03.1973, bearing no. S.O.186(E), whereby, it directed that with effect from 01.04.1973, Section 4, 5 and 6 and the Rules contained in the Second Schedule to the said Act, shall apply to all carriage by air, not being international carriage, as defined in the Second Schedule irrespective of the nationality of the aircraft performing the

carriage subject to the exceptions, adaptations and modifications provided therein. Thus, by virtue of 30.03.1973 notification, the Government of India (in short GOI), expressly superseded its earlier notification dated 17.12.1963 save and except for things done or omitted to be done under it.

11.7 The changes which were brought about in 1972 Act and, are necessary for the adjudication of the instant case, are as follows:

(i). In Section 4, 5 and 6, the following changes were brought about :

“..In section 4,—

(i) sub-section (1), (2) and (3) shall be omitted;

(ii) in sub-section (4) after the words ‘Second Schedule’ the words “as applicable to carriage by Air, not being international carriage by air” shall be inserted;

2. in section 5,—

(i) in sub-section (1) for the words ‘on the First Schedule and the Second Schedule’, the words “in the Second Schedule as applicable to carriage by air not being international carriage by air”, shall be substituted;

(ii) in sub-section (5) for the portion beginning with the words ‘of the First Schedule’ and ending with the words ‘passenger in question’, the words “of the Second Schedule as applicable to carriage by air, not being international carriage by air” shall be substituted;

3. section 6 shall be omitted..”

(ii). As regards Rule 22 of the Second Schedule is concerned, the following change was brought about :-

“(p) in rule 22,—

(i) for sub-rule (1) the following sub-rules shall be substituted, namely:-

*“(1) In the event of death of a passenger, or any bodily injury or wound suffered by a passenger which results in a permanent disablement incapacitating him from engaging in or being occupied with his usual duties or business or occupation, the liability of the carrier for each passenger shall be Rs.7,50,000, if

the passenger is 12 or more years of age, and Rs.3,75,000, if the passenger is below 12 years of age on the date of the accident. Provided that by special contract, the carrier and the passenger may agree to a higher limit of liability.

(1A) In the event of wounding of a passenger or any bodily injury suffered by the passenger which results in a temporary disablement entirely preventing an injured passenger from attending to his usual duties or business or occupation, the liability of the carrier for each passenger shall be limited to a sum calculated at the rate of Rs.750 per day, the period during which the continues to be so disabled or a sum of Rs.1,50,000, whichever is less.”

* (S.O. 659 (E) dated 22nd August, 1989)

(ii) in clause (a) of sub-rule (2) for the figures and words “250 francs” the words “rupees four hundred fifty be substituted;
(iii) in sub-rule (3) for the figures and words “5,000 francs”, the words “rupees four thousand” shall be substituted;
(iv) sub-rule (5) shall be omitted..”

11.8 Pertinently, no change was brought about in Rule 17 of the Second Schedule.

11.9 On 28.05.1999, the Montreal Convention was signed which, led to amendments being made in the 1972 Act, with the enactment of The Carriage By Air (Amendment) Act, 2009. This enactment received the assent of the President, on 20.03.2009 and was brought into force, on 01.07.2009.

12. With the 2009 Amendment, several changes were brought about in the Act. Amendments were made to not only the long title but also to Section 2, 3, 4, 5 and 8 of the 1972 Act.

12.1 Furthermore, two new Sections were inserted i.e. Section 4A and 6A. In addition to the above, the 2009 amendment inserted a new Schedule i.e. the Third Schedule to the 1972 Act.

12.2 The effect of the 2009 amendment was that the rights and liabilities of carriers, passengers were governed by Rules contained in the Third Schedule, which were, in effect, the provisions of the Montreal Convention.

12.3 The GOI by a notification bearing no. SO 142(E) dated 17.01.2014; as on previous occasions, in exercise of its powers conferred upon it, under Section 8(3) of the 1972 Act, directed that from the date of the application of the said notification in the official Gazette, the provisions of Section 5 of the 1972 Act and the Rules contained in the Third Schedule of that Act would apply to all carriage by air not being international carriage by air as defined in the said Schedule subject to the exceptions, adaptation, and modifications set out herein. The GOI, expressly superseded the preceding notification dated 30.03.1973 save and except with respect to things done or omitted to be done before the such supersession.

12.4 By virtue of this notification, the GOI brought about changes in the Third Schedule and in particular, the following changes in Rule 21 and 22.

“..(f). In Rule 21, in sub-rules (1) and (2) for the words “one lakh Special Drawing Rights” the words “rupees twenty lakh” shall be substituted;

(g). In rule 22, -

(i). In sub-rule (1), for words “four thousand one hundred and fifty Special Drawing Rights” the words “rupees eighty thousand” shall be substituted;

(ii). In sub-rule (2), for the words “one thousand Special Drawing Rights” the words “rupees twenty thousand” shall be substituted;

(iii). In sub-rule (3) for the words “seventeen Special Drawing Rights” the words “rupees three hundred fifty” shall be substituted..”

12.5 Therefore, since the accident occurred on 25.05.2011, which was after the issuance of the 30.03.1973 notification, and 2009 amendment but prior to the 17.01.2014 notification, the applicable provisions in the present case would be the Second Schedule to the 1972 Act. Though, the 17.01.2014 notification superseded 30.03.1973 notification, it has saved all those acts which had been done or omitted to be done.

12.6 Having regard to the above, it would have to be said that the provisions of Section 5¹ of the 1972 Act read with Rule 17 and Rule 22 of the Second Schedule as amended by the 30.03.1973 notification, would apply in this case. Section 5 of the 1972 Act, provides that

¹ 5. Liability in case of death - (1) Notwithstanding anything contained in the Fatal Accidents Act, 1855 or any other enactment or rule of law in force in any part of India, the rules contained in the First Schedule, the Second Schedule [and the Third Schedule] shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger.

(2) The liability shall be enforceable for the benefit of such of the members of the passengers family as sustained damage by reason of his death.

Explanation. – In this sub-section, the expression “member of a family” means wife or husband, parent, step-parent, grand parent, brother, sister, half-brother, half-sister, child, step-child and grand-child:

Provided that in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

(3) An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under sub-section (2) enforceable, but only one action shall be brought in India in respect of the death of any one passenger, and every such action by whomsoever brought shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in India or not being domiciled there express a desire to take the benefit of the action.

(4) Subject to the provisions of sub-section (5), the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportion as the Court may direct.

(5) The Court before which any such action is brought may, at any stage of the proceedings, make any such order as appears to the Court to be just and equitable in view of the provisions of the First Schedule or the Second Schedule [or the Third Schedule], as the case may be, limiting the liability of a carrier and of any proceedings which have been or are likely to be commenced outside India in respect of the death of the passenger in question.

notwithstanding anything contained in the Fatal Accident Act, 1855 or any other enactment or Rule in force, the Rules contained in the (Second Schedule) in all cases to which those Rules apply determine the liability of a carrier in respect of death of a passenger. The sub-Section (2) of Section 5 makes it clear that law shall be enforceable for the benefit of such members of the passenger's family who has sustained damage by reason of his death. The explanation expounds that the expression 'members of a family' would, inter alia, mean, the wife, parent or even the brother.

12.7 Similarly, Rule 17² of the Second Schedule enunciates that the carrier will be liable for damage sustained, inter alia, in the event of death of a passenger if, the accident which caused the damage so sustained took place on board the aircraft.

12.8 Rule 22^{3*} provides for quantification of liability. The extent, to

² 17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

³ 22. (1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 2,50,000 francs. Where in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments the equivalent capital value of the said payments shall not exceed 2,50,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a high limit of liability.

(2) (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the passengers or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The limits prescribed in this rule shall not prevent the Court from awarding, in accordance with its

which it has been amended, has, already been referred to in the foregoing paragraphs. The liability in the event of death of a passenger has been pegged qua each such passenger at Rs.7,50,000/- if, the passenger is 12 years or more years of age. However, if, the passenger is below 12 years of age on the date of the accident, the liability stands scaled down to Rs.3,75,000/-. Rule 22(1) contains a caveat, which is, that by a special contract, the carrier and the passenger may agree to a higher limit of liability.

12.9 Clearly, if the pilot and co-pilot fall in the definition of a passenger then they would be entitled to compensation as stipulated under the 1972 Act. The reason, I have come to this conclusion, is that, Section 5 opens with a non-obstante clause, and therefore, provides for determination of liability in terms of the Second Schedule in respect of death of a passenger notwithstanding the provisions of either the Fatal Accidents Act, 1855 or any other enactment or Rule of law, in force, in any part of India.

13. To my mind, Section 5 read with Rule 17 of the Second Schedule makes it clear that the liability of the carrier qua the passenger is determinable only under the provisions of the 1972 Act and the attendant rules, and for this, no other Act or enactment or Rule need be brought into play. The factors such as age, future prospects and employment, etc. have

own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluded Court cost and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

(5) The sums mentioned in francs in this rule shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgement.

Note:3* Read Rule 22 with amendments.

no bearing upon the liability of the carrier. The principle, which appears to form the bedrock of the statute is that once you are on board the aircraft and if, the accident which caused the damage takes place, while the passenger is on board the aircraft, the carrier will be liable.

13.1 As a matter of fact, Rule 17 of the Second Schedule extends the liability to an accident which takes place even in the course of operations of embarking or disembarking. The question therefore is: would the liability be restricted under the 1972 Act only to a passenger? There is no definition of the term “passenger” in the 1972 Act. The ordinary meaning of the word passenger, according to me, should apply. In common parlance, when a person says that a vehicle is a four-passenger car, it includes not only those who are carried but also the operator of the vehicle. In other words, both the occupants as well as the operator of the vehicle are compendiously included under the term ‘passenger’. There is nothing in the 1972 Act, which would have me hold, that the word ‘passenger’, should be given a restricted meaning.

13.2 To my mind, unless expressly excluded by the statute, the word ‘passenger’ ought to include all those who are on board the aircraft. Therefore, the answer to issue no.(ii), in my opinion, will have to be in the affirmative. The petitioners would thus, be entitled to compensation under the 1972 Act.

Issue no.(iii).

13.3 In so far as this issue is concerned, one is required to determine the quantum of compensation that would be payable to the petitioners. As discussed above, since the 30.03.1973 notification would be applicable in the instant case, the petitioners, in the two writ petitions, would be entitled to a compensation of Rs.7,50,000/- each as on the date of the

accident, the pilot and the co-pilot were more than 12 years of age. This position in the instant qua the petitioners has changed as Respondent no.3 arrived at contract with the crew to provide for a higher liability; an aspect which I discussed hereafter.

Issue no.(iv).

13.4 As regards as to whether the petitioners are entitled to compensation, over and above the 1972 Act, by virtue of the employment contract, the answer would depend upon the express and / or implied provisions of the said contract. The reason I have used the expression express or implied provisions of the contract is on account of the fact that while in the terms of engagement of Capt. Harpreet Singh Sekhon (as evidenced by the letter of appointment dated 25.11.2010), there is an express term, which provides that he would be covered for ground hospitalization / Personal Accident Insurance, this clause, is missing in Capt. Manjeet Kataria's letter of appointment dated 31.03.2011.

13.50 The letter of appointment issued to Capt. Manjeet Kataria, however, provides that he would be governed by rules, which are prevailing or amended from time to time. As to what were those rules, is an aspect, which has not been brought fore by respondent no.3. Notwithstanding the above, it is the stand of respondent no.3 that it had entered into an insurance contract qua the crew. The proposal dated 11.01.2011, which was accepted by UICL, clearly stated that respondent no.3 had offered to pay a premium, which would not only cover the said respondent against risks with respect to the aircraft and third party liability, but also, vis-à-vis risks qua the crew (i.e. the pilot and the co-pilot) and the passengers on board the aircraft. The relevant extract of the proposal which adverts to this aspect of the matter is referred to

hereinbelow :-

Details of insurance Required	
Section II	
Combined Single Limit required	INR 2500000000/- (Two Hundred Fifty four crore & fifty two lacs only)
Section III	
If answer is YES, please provide the Sum Insured	
Passenger Liability required	Yes
Amount of Liability per passenger	INR 50,00,000/- Each For 9 Passengers
Third Party Liability Limit Required	Yes
Limit of liability	INR 250,00,00,000
Baggage liability required	Yes
Limit per passenger	INR 25,000/- Each for 9 Passengers
Do you require hull war risk cover	Yes
Do you Require PA for Pilots	Yes, INR 50,00,000/-
Do you require LOL for Pilots	No

___ Flight to be covered	Yes
--------------------------	-----

13.6 There was thus, it appears, in the given circumstances an implied term in the contract obtaining between Capt. Manjeet Kataria and respondent no.3 that the latter would obtain an insurance cover for the former.

13.7 In view of the aforesaid clause, respondent no.3, to my mind, had entered into an employment contract which required it to insure Capt. Harpreet Singh Sekhon and Capt. Manjeet Kataria against death or bodily injury.

13.8 In these circumstances, in my view, there can be no doubt that under the employment contract, the petitioners would be entitled to compensation over and above that, which is, provided in the 1972 Act.

Issue no.(v)

13.9 This brings me to issue no.(v), which is, as to whether respondent no.3's liability towards the petitioners is covered under the insurance contract executed between the said respondent and UICL. UICL has vigorously disputed its liability in so far as the crew is concerned. Admittedly, UICL has paid to respondent no.3, a sum of Rs.13,49,90,000/- towards the damage to the aircraft. Furthermore, as per the final report of its surveyor, which is dated 15.11.2011, UICL was requested to pay a sum of Rs.1,50,00,000/-, on account of the death of persons on ground and a sum of Rs.9,93,510/- towards damage caused to two houses due to the crash. In addition, UICL has also requested to pay compensation amounting to Rs.2,50,00,000/- in respect of passengers on board, which includes the two doctors, male nurse and the legal heir of the patient who died in the crash. As to whether the report of the

surveyor has been accepted or not by UICL, is not known. The only ground, on which, UICL resists payment of compensation in respect of the crew (i.e. the pilot and the co-pilot) is, that the crew, according to it, would not fall within the ambit of the term “passenger”.

14. In view of the discussion above, in my opinion, if an ordinary meaning is given to the word ‘passenger’, the crew, would clearly stand covered.

14.1 However, notwithstanding the aforesaid line of reasoning, since, an insurance contract is a special contract between insured and the insurer, I would also like to examine and/or deal with terms of the policy so as to rule out any express or implied exclusion of “crew”, as is sought to be argued by UCIL.

14.2 In this context, I may note that it is a well accepted principle of law that, in a case, where there is any ambiguity in the provisions of a contract of such nature (in this case an insurance contract) then, the ambiguity, in the contract, is held to be against the maker of the contract. The doctrine of *contra-proferentem* would apply, in such circumstances. In this context, I may also note that the surveyor employed by the insurance company in his final survey report dated 15.11.2011, clearly opined, that the crew were covered by the insurance contract i.e. the policy. The relevant extract of that opinion of the surveyor is set out hereinbelow :-

“..6. x x x x x

(a) x x x x x

(b) x x x x x

(c) x x x x x

(d) Loss of Life of Pilots : The loss of life of both the pilots is covered as per the policy terms and conditions. Copies of appointment letters and death certificates of both pilots are attached as Annexure XXI & XXII. The endorsement

no.AVN 74 attached to the policy refers in this regard. The policy has the coverage for total ten persons on board i.e. 08 (Eight) passengers and 02(two) pilots.

In the present case, there were total 07 (seven) persons on board i.e. 02 (Two) Pilots and 05 (Five) Passengers. Refer para 24a and 24b of the report..”

(emphasis is mine)

14.3 Besides the aforesaid, the DGCA, in its counter affidavit in paragraph 6, unambiguously takes the same stand. As a matter of fact, the DGCA has stated, in no uncertain terms that it renewed the NSOP qua respondent no.3 only after it had satisfied itself that there was an adequate insurance cover in place, inter alia, qua the crew. That DGCA, was obliged to ensure adequacy of insurance cover vis-à-vis the crew, as well, flows from clause 10.10 of the CAR, Section 3, Series C, Part-III; which, in turn, is issued by it, in exercise of powers under Section 133 A of the 1937 Rules. The said clause (i.e. clause 10.10) for the sake of convenience is extracted hereinbelow :-

“..10.10. The operator shall maintain a current insurance for an amount adequate to cover its liability towards passengers and their baggage, crew, cargo, hull loss and Third party risks in compliance with requirements of the Carriage by Air Act, 1972, or any other applicable law...”

14.4 The Clause 10.10 of CAR, Section 3, Series C, Part-III, clearly obliged respondent no.3 to have in place an adequate insurance cover for liability which may arise either under the 1972 Act or any other applicable law. In the instant case, the Contract Act, 1872 would apply. Under the employment contract executed with the crew, respondent no.3 had, as discussed above, agreed to take out a personal insurance policy qua the deceased pilot and the co-pilot. The DGCA avers that it examined the policy to ensure that it covered the crew. As a matter of

fact, the DGCA, with its counter affidavit, brought on record the document dated 12.05.2011 (i.e. the NSOP), and the endorsement dated 31.01.2011 issued by UCI; the latter was generated after the initial policy dated 14.01.2011, had been already issued. The endorsement dated 31.01.2011 (which is in fact an amendment to the initial policy), when, read with initial (i.e. the original) policy – especially, that part of it, which adverts to, what is the extent and nature of the “risks covered” is, suggestive of the fact that crew were covered by the policy or, at least, not expressly or even impliedly excluded. The relevant extract of the document dated 31.01.2011 and original policy reads as follows :-

“..Insured’s Request / Reference Date : 30/01/2011 Number :
 ENDORSEMENT CAUSE :
 CORRECTION IN SEATING CAPACITY
 ENDORSEMENT WORDING :
 IT IS HEREBY DECLARED AND AGREED THAT ON THE
 REQUEST OF THE INSURED AND E-MAIL OF CHIEF
 ADMINISTRATOR D.G.C.A. THE SEATING CAPACITY
 OF THE AIRCRAFT IS TO BE READ AS, 2 (CREW) +
 UPTO 9 (NINE PASSENGERS) AND NOT AS MENTIONED
 IN THE POLICY.
 ALL OTHER TERMS AND CONDITIONS REMAIN
 UNALTERED..”

14.3 The relevant extract of the original policy reads as follows :-

“..Policy Period : 00:00 Hrs on 16/01/2011 To Midnight of 15/01/2012
 Receipt Date & No. : 14/01/2011 040600/B1/10/0000001823
 Net Premium : 278920 RUPEES TWO LAKH SEVENTY EIGHT
 THOUSAND NINE HUNDRED TWENTY ONLY
 UTIC 040600 : 1001

Srl. No.	Description	Sum Insured (Rs.)
1	HULL ALL RISK, (TOTAL PREMIUM UNDER THE POLICY IS RS.12,30,595/- INCLUDING TAX PAYABLE IN 4 EQUAL INSTALMENT	13,50,00,000.00

2.	HULL WAR RISK LIABILITY	13,50,00,000.00
3.	THIRD PARTY LIABILITY INCLUDING PASSENGER LEGAL LIABILITY OF RS.50 LACS PER PASS. & BAGGAGE LEGAL LIAB of RS.25,000/- PER PASS	2,70,00,00,000.00
	TOTAL SUM INSURED (RS.)	Rs. 2,97,00,00,000.00

TOTAL SUM INSURED (IN WORDS) : RUPEES TWO HUNDRED NINETY SEVEN CRORE ONLY.

Risks Covered : HULL ALL RISKS FOR NON SCHEDULED CHARTER TYPE-FIXED WING, MAKE-PILATUS PC-12/45 MODEL 2005, SITTING CAPACITY 8+2 TURBINE ENGINE, RED. NO.N386F..”

(emphasis is mine)

14.4 When the endorsement is read with the original policy, it is noticed that the expression seating capacity falls under the head ‘Risks Covered’. Furthermore, when these two documents are read with proposal filed by respondent no.3, there can only be one conclusion, which is, that it was always intended by the insured and insurer to cover the crew. At the risk of repetition, I may point out that, under the heading “passenger seating capacity”, the number given is: 2 + 9, that is, 2 crew and 9 passengers; which is in line with the endorsement dated 31.01.2011.

14.5 As would be noticed the risks covered included the risk to the Hull and other risks including qua persons on board the aircraft. The seating capacity in the aircraft was amended to clearly indicate that it included the crew. Therefore, unless any exclusionary clause was incorporated in the policy, one cannot deprive the crew of the insurance cover. As noted above, the surveyor also read the policy in the manner which according to

his opinion covered the crew. In contracts dealing with insurance, the Supreme court in the following cases has applied the principle of contra proferentem and has ruled against the insurance companies. See : ***General Assurance Society Ltd. Vs. Chandmull Jain and Anr.***, and also, a case involving UICL, that is, ***United Insurance Company Ltd. Vs. Pushpalaya Printers***. The observations of the Supreme Court in the case of ***General Assurance Society Ltd. Vs Chandmull Jain & Anr.*** being apposite are extracted hereinbelow:

“....in a contract of insurance there is requirement of uberrima fides i.e. good faith on the part of assured and the contract is likely to be construed contra proferentem, that is, against the company in case of ambiguity or doubt....”

14.6 These observations were approved in the latter judgement of the Supreme Court in the case of ***United Insurance Company Ltd. Vs Pushpalaya Printers*** at pages 698-699 in paragraph 6.

14.7 The issue as to whether the crew are covered under the policy can be looked at from another angle, to which, I have made a reference while discussing the scope and the ambit of the term, ‘passenger’ appearing in the 1972 Act. UICL has clearly admitted that passengers were covered under the subject insurance policy. Its contention, however, was that passenger would not include crew. For the very same reasons, based on which I came to the conclusion that the term ‘passenger’ would include crew should apply with equal force to the term “passenger” in the policy. There is, as indicated above, no specific exclusion of crew from the expression ‘passenger’. Therefore, notwithstanding the argument advanced by Mr. De on behalf of UICL that the endorsement dated 31.01.2011, only recognised the change in the seating capacity and did not recognise the inclusion of the crew in the policy, the crew, to my

mind, stand included.

14.8 At this stage, I must also bring to fore a very disturbing aspect, which emerged, during the course of the proceedings. Both UICL as well as respondent no.3, for reasons best known to them, to begin with, did not place before me the endorsement dated 31.01.2011. As noticed during the earlier part of my discussion, this document was brought on record only when DGCA/ UOI was given an opportunity to file a counter affidavit in the matter. Furthermore, in order to ascertain as to whether or not crew were covered under the insurance policy, I had persistently queried Mr. De that if, it was the stand of UICL that the crew was not covered by the subject insurance policy then, what would be the difference in the premium, if any. In other words, was the premium payable by respondent no.3 to UCIL different from that, which it would have paid had the crew been included. I was neither provided with any answer nor was any material qua the money paid by respondent no.3, towards premium, placed on record. Furthermore, there was no material brought on record which would suggest that the proposal of respondent no.3 was either not accepted or even varied by UICL. Consequently, to my mind, the contract between respondent no.3 and UICL was formed as soon as the proposal sent by the former was accepted and premium demanded was remitted. In this context, I may only advert to the following statement of law appearing in the Halsbury at page 57 in paragraph 70:

“.... (2) FORMATION OF A CONTRACT TO INSURE

70. **Necessity for offer and acceptance.....** The proposer, by completing, signing and submitting the form, commits himself to those terms and undertakes to pay whatever the insurers may charge by way of premium.

When considering the proposal in such a case, where the insurers wish to make variations in their usual form of policy, whether by way of addition or subtraction, they must submit the variations to the proposer in the form of a counter offer before they have committed themselves to an unequivocal acceptance of the proposal....”

14.9 Having regard to these circumstances, I can only say that an adverse inference has to be drawn qua UICL, which is that, the crew were covered by the policy and that requisite premium in that behalf was paid and accepted by UICL.

14.10 Therefore, according to me, the petitioners would be covered, any which way, under the insurance policy.

Issue no.(vi)

15. In view of the answer given to issue no.(v), one would have to hold in consonance with the provisions of the policy that the liability towards the petitioners in the two writ petitions would be restricted to a sum of Rs.50 lakhs each.

16. Before I conclude, I must deal with the submission raised on behalf UICL by Mr. De, which is, that the matter involved disputed issues of fact, and therefore, a writ petition was not an appropriate remedy in the matter. In my view, this argument, in the instant case is completely untenable. A substantial part of the facts arising in the matter are not in dispute. The primary dispute in the matter pivots around the interpretation, scope and effect of the subject insurance policy. Having said so, it is not as if, where disputed questions of facts arise, a writ court cannot adjudicate upon the matter. It is a rule of discretion, which a court applies, in matters where it appears to the court that prolix material by way of evidence may have to be tendered by parties. Pleadings backed by

affidavits, in matters, like the present one, can form a base for a full, final and complete adjudication of the dispute. In this behalf, the observations of the Supreme Court in the case of ***ABL International Ltd. And Anr. Vs. Export Credit Guarantee Corporation of India Ltd. And Ors., (2004) 3 SCC 553***, being apposite, are extracted hereafter :-

16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of Smt. Gunwant Kaur & Ors. vs. Municipal Committee, Bhatinda and Ors. [1969 (3) SCC 769] where dealing with such a situation of disputed questions of fact in a writ petition this Court held :

"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will

normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."

17. The above judgment of Smt. Gunwant Kaur (supra) finds support from another judgment of this Court in the case of Century Spinning and Manufacturing Company Ltd. & Anr. vs. The Ulhasnagar Municipal Council & Anr. [1970 (1) SCC 582] wherein this Court held :

"Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary." (emphasis is mine)

16.1 Mr. De was not able demonstrate as to which part of the dispute required UICL to lead oral evidence.

16.2 Before I close let me first deal with the submission advanced by Mr. Kataria as well, which is that, the Montreal Convention, which appears in the Third Schedule of the 1972 Act would govern the matter even for domestic carriage. The Third Schedule was inserted in the 1972 Act with effect from 01.07.2009 with a corresponding amendment in the main Act whereby, Section 4A was included in the very same Act (i.e. the 1972 Act). This was done to give effect to the Montreal Convention. Therefore, to begin with the Third Schedule only dealt with international carriage. It is only after the GOI issued the notification dated 17.01.2014, that the Third Schedule became applicable to domestic carriage as well, as discussed hereinabove. For this purpose, GOI vide notification dated 17.01.2014 brought about amendments in Section 5 and some of the Rules contained in the Third Schedule. More specifically, since an amendment was brought about in the sub-Rules (1) and (2) of Rule 21 of the Third Schedule the word 1 Lakh SDRs got replaced with Rs.20 Lakhs, and therefore, the compensation for domestic carriage got restricted to Rs.20 Lakhs. However, as noticed above, this amendment would not inure to the benefit of the petitioners as not only the crash took place on 25.05.2011, that is, the date prior to the institution but also the notification itself clearly saved all things done or omitted to be done under the previous notification i.e. notification dated 30.03.1973. Therefore, this submission of Mr. Khatri cannot be accepted.

16.3 Furthermore, I must note that Messrs D.D.Singh/ Ratan Singh had relied upon the judgements which are referred to in paragraph 8 herein above to emphasise the point that since crew are considered as workmen,

their liability was that which is provided in the 1923 Act. A part of this argument, I have already dealt with while adverting to Section 5 of the 1972 Act. To recapitulate, Section 5 of the 1972 Act clearly expounds that those who are covered under the provisions of the said Act and the schedules, the liability of the carrier in respect of death of a passenger would be governed by the provisions of the aforementioned Act. The opening words of Section 5 makes that amply clear by use of the expression: “Notwithstanding anything contained in the Fatal Accidents Act, 1885 or any other enactment or rule of law in force in any part of the India, the rules contained in the first schedule, the second schedule and the third schedule shall.....” determine the liability of the carrier. Therefore, the liability of the carrier under the 1972 Act is in addition to the liability under the 1923 Act with the caveat, that any payment made under the 1923 Act will have to be adjusted qua the liability determined under the 1972 Act. Furthermore, Rule 22(1) clearly provides that a carrier by a special contract may agree to a higher limit qua its liability. In the instant case, as discussed in the foregoing paragraphs, I have reached a conclusion that a special contract obtained between the crew and respondent no.3, whereby, it had undertaken a higher liability which it sought to secure by obtaining an insurance cover from UCIL. Thus the judgements cited on behalf of the respondent no.3, to stress the point that the crew being classified as workmen would not be entitled to compensation beyond what is provided under the 1923 Act, in my view, will not impact the conclusion reached herein above, by me.

Issue no.(vii) - Relief

16.4 Having regard to the fact that respondent no.3 has already deposited , a sum of Rs.10 Lakh each in respect of the set of petitioners

under orders of this court dated 29.10.2015, UICL will pay the balance sum of Rs.40 Lakhs each to the two set of petitioners.

16.5 In so far as WP(C) 1867/2012 is concerned, 2/3rd of the total sum of Rs.40 Lakhs would be paid to petitioner no.1 and 2, while 1/3rd will be paid to the mother of Late Capt. Harpreet Singh Sekhon i.e. petitioner no.3.

16.6 In so far as WP(C) 1880/2012 is concerned, the entire sum of Rs.40 Lakh would be paid by UICL in equal-half to the petitioners arrayed therein.

16.7 Furthermore, UICL will make payments to the petitioners, as indicated above, within two weeks from today, failing which, simple interest at the rate of 12% p.a will run on the outstanding amount after the expiry of the aforementioned timeframe. In so far as the money deposited by respondent no.3 is concerned, the registry will forthwith release the same, with accrued interest, if any, in favour of the petitioners in WP(C) No. 1867/2012 and WP(C) No.1880/2012 or their authorised representatives, via banking instruments in the same ratio as indicated qua payments to be made by UICL.

16.8 Since, respondent no.3 has paid Rs.10 Lakh to each of the two set of petitioners, in the aforementioned writ petitions, it shall be open to it to take recourse to an appropriate remedy to recover the same from UICL.

16.9 As far as DGCA/ UOI is concerned, what has come to fore during the adjudication of the captioned petitions, is that, recommendations were made by the Committee constituted to inquire into the reasons for the crash. The counter affidavit filed by the DGCA/ UOI does not touch upon the aspect as to whether any action was taken on the recommendations made by the Committee. The reason, perhaps, was

that the lis between the petitioners and the respondents, essentially, related to payment of compensation. Since, during the adjudication of the writ petition, it has been found, as evidenced by the report submitted by the Committee, that the crash of the subject aircraft resulted in the death of not only of persons on board, but also of persons on ground besides damage to immovable property, there is a palpable public interest in knowing as to the action that the DGCA and/or UOI has taken with respect to the recommendations made by the said Committee. Therefore, the DGCA/ UOI shall file an Action Taken Report (ATR), within four weeks from today, with regard to the safety recommendations made by the Committee via its report. List for compliance only on this aspect on 18.03.2016.

17. For all other purposes the writ petitions are disposed of, in the aforesaid terms. Costs in the petitions are fixed at Rs. 15,000/- each. The UICL will pay the two sets of costs to the petitioners in the ratio set out in paragraphs 16.5 & 16.6 above.

RAJIV SHAKDHER, J

JANUARY 25, 2016

kk/yg