

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 965 of 2013

1. Md. Shamim S/o Jakir Husain Aged About 55 Years occupation dependent.
2. Shabnam Parveen W/o Md. Shamim Aged About 50 Years occupation house wife.
3. Md. Salman S/o Md. Shamim Aged About 19 Years occupation student.
4. Shanaz Parveen D/o Md. Shamim Aged About 16 Years occupation student Minor, Through her natural guardian father Md. Shamim,

All R/o village Pathalgaon, Thana & Tah. Pathalgaon, civil and revenue Distt. Jashpur C.G.

---- Appellants

claimants

Versus

1. Vinay Kumar Gupta S/o Late Kapil Prasad Gupta Aged About 45 Years occupation bus owner R/o village Tapkara, Thana-Tapkara, Distt. Jashpur C.G.
2. Deosharan Ram S/o Ramdeo Ram Aged About 36 Years caste khairwar occupation driver R/o village Jambahar, Thana-Tapkara, Distt. Jashpur C.G.
3. National Insu.Co.Ltd. Thru- Branch Manager, Kachhari Road, Ranchi (Jharkhand) 834001

---- Respondent

For Appellants	:	Shri Sanjay Agrawal, Advocate.
For Respondent Nos.1 & 2	:	None.
For Respondent No.3	:	Shri BN Nande, Advocate.

And

MAC No. 13 Of 2014

- Branch Manager National Insurance Company Limited Kutcheri

Road, Ranchi Jharkhand, Through- Branch Manager, National Insu.Co.Ltd., Korba C.G., Thru- Authorised Signatory- National Insu.Co.Ltd., Divisional Office Bilaspur C.G.

---- Appellant

Vs

1. Sanjay Singh. S/o Late Satya Narayan Singh Aged About 45 Years occupation agriculture
2. Smt. Anita Singh W/o Sanjay Singh Aged About 33 Years occupation house wife. (claimants)
3. Devsharan Ram S/o Ramdeo Ram Aged About 37 Years caste khairwar, occupation driver, R/o Jambahar, Thana- Tapkara, Distt. Jashpur C.G.
4. Vinay Kumar Gupta S/o Late Kapil Prasad Gupta, proprietor Jaibala Bus Service, R/o village Tapkara, Distt. Jashpur C.G. (owner)

---- Respondent

For Appellants	:	Shri BN Nande, Advocate.
For Respondent Nos.1 & 2	:	Shri CJK Rao, Advocate.
For Respondent Nos.3 & 4	:	None

And

MAC No. 14 Of 2014

- Branch Manager National Insurance Company Limited Kutchery Road Ranchi Jharkhand, Through- Branch Manager, National Insu.Co.Ltd., Korba C.G., Through- Authorised Signatory National Insu.Co.Ltd. Divisional Office, Bilaspur C.G.

---- Appellant

Vs

1. Mobin Siddique S/o Moinuddin Siddique Aged About 32 Years occupation agent, R/o Mominpara, Ambikapur, Distt. Surguja C.G.
2. Devsharan Ram Nayak S/o Ramdeo Ram Aged About 30 Years, occupation driver, R/o village Tapkara, Post- Tapkara, Distt. Jashpur Nagar C.G.
3. Vinay Kumar Gupta S/o Late Kapil Prasad Gupta, proprietor Jaibala Bus Service, R/o village Tapkara, Distt. Jashpur (C.G.)

(Owner)

---- Respondent

For Appellants	:	Shri BN Nande, Advocate.
For Respondent No.1	:	Shri CJK Rao, Advocate.
For Respondent Nos.2 & 3	:	None

And

MAC No. 15 Of 2014

- Branch Manager National Insurance Company Limited Kutchery Road Ranchi Jharkhand, Through- Branch Manager, National Insu.Co.Ltd., Korba C.G., Through- Authorised Signatory National Insu.Co.Ltd. Divisional Office, Bilaspur C.G.

---- Appellant

Vs

1. Anita Singh W/o Sanjay Singh Aged About 33 Years occupation house wife, R/o village Sayarra, Thana And Tah. Lundra, Distt. Surguja C.G.
2. Devsharan Ram Nayak S/o Ramdeo Ram Aged About 30 Years occupation driver, R/o village Tapkara, Post- Tapkara, Distt. Jashpur Nagar C.G.
3. Vinay Kumar Gupta S/o Late Kapil Prasad Gupta, proprietor of Jaibala Bus Service, R/o village Tapkara, Distt. Jashpur (C.G.)

---- Respondent

For Appellants	:	Shri BN Nande, Advocate.
For Respondents	:	None.

And

MAC No. 16 Of 2014

- Branch Manager National Insurance Company Limited Kutchery Road Ranchi Kutchery Road Ranchi Jharkhand, Through- Branch Manager, National Insu.Co.Ltd., Korba C.G., Through- Authorised Signatory National Insu.Co.Ltd. Divisional Office, Bilaspur C.G.

---- Appellant

Vs

1. Devnath Singh S/o Late Runga Ram Singh Aged About 40 Years occupation caste gond R/o Devgarh, P.S. And Tah. Sitapur, Distt. Surguja C.G.
2. Chaman Singh S/o Late Runga Ram Singh Aged About 35 Years occupation cast Gond, R/o Devgarh, P.S. And Tah. Sitapur, Distt. Surguja C.G.
3. Devsharan Ram Nayak S/o Ramdeo Ram Aged About 30 Years occupation driver, R/o village Tapkara, Post- Tapkara, Distt. Jashpur Nagar C.G.
4. Vinay Kumar Gupta S/o Late Kapil Prasad Gupta, proprietor Jaibala Bus Service, R/o village Tapkara, Distt. Jashpur (C.G.)

---- Respondent

For Appellants	:	Shri BN Nande, Advocate.
For Respondents	:	None.

And

MAC No. 17 Of 2014

- Branch Manager National Insurance Company Limited Kutchery Road Ranchi Jharkhand, Through- Branch Manager, National Insu.Co.Ltd., Korba C.G., Through- Authorised Signatory National Insu.Co.Ltd. Divisional Office, Bilaspur C.G.

---- Appellant

Vs

1. Md. Ibrahim Khan S/o Late Navab Khan Aged About 53 Years occupation agriculture
2. Saliha Khatoon Alias Saliha Bibi W/o Ibrahim Khan Aged About 51 Years occupation house wife
3. Gudiya Bibi Alias Rajiya Bibi W/o Late Mokhtar Khan Aged About 25 Years occupation house wife
4. Minor Sahid Khan S/o Late Mokhtar Khan Aged About 5 Years
5. Minor Nazra Parvin D/o Late Mokhtar Khan Aged About 3 Years
6. Suphiya Parvin D/o Late Mokhtar Khan Aged About 1 Year

All above minor respondents No. 4 to 6 through their natural guardian

mother Gudiya Bibi alias Rajiya Bibi w/o late Mokhtar Khan respondent No.3.

All above respondents No. 1 to 6 R/o Village Palhekala (Mahuliya) PS Patan Post Office Palhekala Distt. Palamu (Jharkhand).

7. Devsharan Ram S/o Ramdeo Ram Aged About 37 Years caste Khairwar occupation driver R/o Jambahaar, P.S. Tapkara, Distt. Jashpur C.G.
8. Vinay Kumar Gupta S/o Late Kapil Prasad Gupta, proprietor Jaibalal Bus Service R/o village Tapkara, Distt. Jashpur (C.G.)

9. ---- Respondent

For Appellants	:	Shri BN Nande, Advocate.
For Respondents	:	None.

And

MAC No. 18 Of 2014

- Branch Manager National Insurance Company Limited Kutchery Road Ranchi Kutchery Road Ranchi Jharkhand, Through-Branch Manager, National Insu.Co.Ltd., Korba C.G., Through-Authorised Signatory National Insu.Co.Ltd. Divisional Office, Bilaspur C.G.

---- Appellant

Vs

1. Md.Shamim S/o Zakir Hussain Aged About 55 Years occupation dependent
2. Shabnam Parvin W/o Md. Shamim Aged About 50 Years occupation house wife
3. Md. Salman S/o Md. Shamim Aged About 19 Years occupation student
4. Shanaz Parvin D/o Md. Shamim Aged About 16 Years Minor, Thru- natural guardian Father Md. Shamim, respondent no.1.

All above respondents No. 1 to 4 R/o village Patthalgaon P.S. and Tahsil Patthalgaon Distt. Jashpur (CG)

5. Devsharan Ram Nayak S/o Ramdeo Ram Aged About 30 Years occupation driver, R/o village Tapkara, Post- Tapkara, Distt. Jashpur Nagar C.G.

6. Vinay Kumar Gupta S/o Late Kapil Prasad Gupta, proprietor
Jaibala Bus Service, R/o Tapkara, Distt. Jashpur (C.G.)

---- Respondent

For Appellants	:	Shri BN Nande, Advocate.
For Respondents No.1 to 4	:	Shri Sanjay Agrawal, Advocate.
For Respondents No.5 & 6	:	None.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board By Justice Pritinker Diwaker

09/08/2017

As all the seven appeals arise out of the common award dated 9.7.2013 passed by Additional Motor Accident Claims Tribunal, Ambikapur, Distt. Surguja, they are being disposed of by this common order.

02. Brief facts of the cases are that on 22.10.2010 a bus bearing registration No.CG 14A-1634 was being driven in a rash and negligent manner as a result of which it turned turtle and the passengers Ku. Swati Singh, Mokhtar Khan, Mohd. Tanvir Alam and Phoolkunwar suffered grievous injuries and succumbed to the same whereas Mobin Siddiqui and Smt. Anita Singh suffered grievous injuries and the respective claim cases were filed.

03. **MAC No.965/13 and MAC No.18/14**: These appeals – one filed by the claimants and another preferred by the insurance company – arise out of claim case No.177/11 filed by four claimants who are father, mother, brother and sister of deceased Tanvir Alam, claiming compensation of Rs.51 lakhs, inter alia, pleading that deceased Mohd.

Tanvir Alam was fitter engineer, aged 23 years, was earning Rs.15,000/- per month and died due to rash and negligent driving of the vehicle in question which was insured with National Insurance Company and therefore, they are entitled for the compensation as claimed under various head. The Tribunal in this claim case has awarded compensation of Rs.4.20 lakhs.

04. Counsel for the appellants submits that the compensation awarded by the Tribunal is very much on the lower side, monthly income of the deceased has not been considered properly and the future prospects have also not been taken into account. Likewise, multiplier of 10 has also wrongly been applied. He submits that under the conventional heads also inadequate compensation has been awarded which needs to be suitably enhanced.

05. Opposing the submission of the claimants, it has been argued on behalf of the insurance company that so far as quantum of compensation is concerned, the same is just and proper and does not call for any interference.

A counter appeal i.e. MAC No.18/14 has been filed by the insurance company, inter alia, pleading that liability of the insurance company has wrongly been fastened by the Tribunal without affording it proper opportunity to adduce evidence, in particular the evidence of concerned officer/employee of RTO. He submits that as per record of the criminal case, more than 60-70 persons were travelling in the bus whereas as per permit sitting capacity of the bus was only 51. He submits that once there was a breach of policy conditions, liability cannot be fastened upon the insurance company to satisfy the award.

06. Replying to this argument, it has been submitted by the claimants that even assuming that 60-70 persons were traveling in the bus, the insurance company cannot shirk its liability because admittedly as per permit risk of 51 persons was covered and present is a case where in the unfortunate accident four persons died and two suffered injuries and as such, only six claim cases were filed. Thus the insurance company cannot deny its liability merely on the ground of traveling of passengers in the bus in excess of the sitting capacity prescribed in the permit.

07. MAC No.13/14 relates to claim case No.174/2011 wherein the Tribunal has awarded compensation of Rs.2 lakhs to parents of the deceased Ku. Swati Singh, aged 11 years. MAC No.14/2014 relates to claim case No.176/11 wherein the Tribunal has awarded Rs.26,400/- to injured/claimant Mobin Siddiqui. MAC No.15/14 relates to claim case No.256/11 wherein the Tribunal has awarded compensation of Rs.19,100/- in favour of the injured/claimant Smt. Anita Singh. MAC No.16/14 arises out of claim case No.220/11 wherein the Tribunal has awarded compensation of Rs.65,000/- in favour of the claimants for death of Phoolkunwar and MAC No.17/14 is in relation to claim case No.175/11 wherein the Tribunal has awarded compensation of Rs.4,84,000/- in favour of claimants for the death of Mokhtar Khan.

08. The insurance company has filed the aforesaid appeals challenging its liability on the grounds as mentioned above i.e. traveling of passengers in excess of the sitting capacity of 51 prescribed in the permit and denial of opportunity of adducing evidence by the Tribunal.

09. Before we proceed to decide MAC No.965/13 filed by the

claimants for enhancement of the compensation amount, we feel it appropriate to decide the appeals filed by the insurance company and the legal points raised therein. The main contention advanced on behalf of the insurance company is that proper opportunity has not been afforded to it to summon the officer/employee from the concerned RTO.

Even assuming that any officer/employee from the RTO had appeared before the Tribunal, at best he could have proved the fact that capacity of the vehicle in question i.e. bus was 51+1+1, which is not in dispute. Present is not a case where the insurance company is being asked to satisfy claims of more than 51 persons but here only six claim cases were filed, four arising out of death of the passengers and two on behalf of the injured passengers. As per permit, admittedly the risk of 51 passengers was covered and as such, the insurance company is liable to satisfy the award in respect of these claimants. Law in this regard is well settled that in cases of overloading of passengers in the vehicle the insurance company is liable to indemnify for the loss of life or injury to the extent of number of passengers insured by it. {See ***National Insurance Co. Ltd. Vs. Anjana Shyam and others, (2007) 7 SCC 445*** and ***United India Insurance Co. Ltd. Vs. K.M. Poonam and others, 2011(3) CGLJ 260 (SC)***}.

10. On the basis of above factual and settled legal position, all the appeals preferred by the insurance company i.e. MAC Nos.13/2014 to 18/2014 being without any substance are hereby dismissed.

11. So far as MAC No.965/2013 is concerned, in absence of any evidence regarding income of the deceased, considering the fact that

the incident took place in the year 2010, notional income of deceased Mohd. Tanvir Alam can be taken as Rs.6000/- per month i.e. Rs.72,000/- per annum. Keeping in view age of the deceased i.e. 23 years, 50% is to be added towards future prospects and having done so, the annual income of the deceased comes to Rs.1,08,000/-. After deducting 50% from it towards his personal and living expenses, the annual loss of dependency comes to Rs.54,000/-, which after applying the multiplier of 18 is worked out to Rs.9,72,000/-. In the overall facts and circumstances of the case, in particular the fact that in the accident a young boy of 23 years has lost his life, award of a further sum of Rs.2 lakhs under the conventional head appears to be just and proper. It is awarded accordingly. Thus, the total compensation for which the claimants shall be entitled comes to Rs.11,72,000/-.

12. In the result:

- MAC Nos.13/2014 to 18/2014 preferred by the insurance company being without any substance are hereby dismissed.
- MAC No.965/2013 preferred by the claimants is allowed in part. The claimants are held entitled for a total compensation of Rs.11.72 lakhs/-. Since the Tribunal has already awarded Rs.4.20 lakhs, the claimants shall be entitled to have enhanced compensation of Rs.7.52 lakhs with interest @ 9% per annum from the date of application till realization.

Before parting with the case, we deem it necessary to point out that out of the total six claim cases filed before the Tribunal, appeal has been filed by the claimants of one claim case only for enhancement

before this Court and therefore, we make it clear that disposal of these appeals will not come in the way of the other claimants if they wish to file appeal for enhancement of compensation in future.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge