NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC NO. 1168 OF 2017

- The New India Assurance Co. Ltd., through its Divisional Manager, Divisional Office, SADA Complex, Transport, Nagar, Korba, Tah. & District. Korba (C.G.)

… Appellant

versus

1. Bhagwat Singh, S/o Hari Singh, aged about 45 years
2. Ku. Jamuna, D/o Bhagwat Singh, aged about 16 years
3. Ku. Triveni, D/o Bhagwat Singh, aged 14 years
   Res. No. 2 & 3 are minor through their father-Bhagwat Singh (Res. No.1)
   All are Kanwar by caste, R/o Vill.- Kurudih, Tah. & Dist. Korba (C.G.)
4. Amit Minj, S/o Shri R. Minz, aged 30 years, R/o Vill.- Naktikhar, P.S.- Balko Nagar, Tah. & Dist. Korba (C.G.)

… Respondents

MAC NO. 402 OF 2016

- The New India Assurance Co. Ltd. Through Its Divisional Manager, Divisional-Office, IInd Floor, Rama Trade Centre, Above Axis Bank, Opp.- Rajiv Plaza, Bus Stand Road, Bilaspur, Tah. & Distt.- Bilaspur, Chhattisgarh

… Appellant

versus

1. Khilawan Singh Markam S/o Sh. Nohar Singh, Aged About 46 Years
2. Dhirender Singh Markam S/o Khilawan Singh Markam, Aged 19 Years
3. Tuleshwar Singh Markam S/o Khilawan Singh Markam, aged about 10 years
4. Ku. Jyoti Markam D/o Khilawan Singh Markam, Aged About 10 Years
   Respondent no. 3 & 4 are minor, through their next friend and father Khilawan Singh Markam-Respondent no.1.
5. Nohar Singh Markam S/o Late Sh. Dharam Singh Markam, Aged About 70 Years
6. Kekati Bai W/o Nohar Singh, Aged About 67 Years
   Respondent No. 1 to 6 all are R/o Vill.- Sakri, Tah. & Distt.- Bilaspur, Chhattisgarh
7. Amit Kumar Minj S/o R. Minj, Aged About 31 Years R/o H. No. 188, Naktikhar, P.O.- Godhi, Tah. & Distt.- Korba, Chhattisgarh (Driver Cum Owner Of Bolero No. C.G./12- A E /8058)

… Respondents

MAC NO. 403 OF 2016

- The New India Assurance Co. Ltd. Through Its Divisional Manager, Divisional-Office, IInd Floor, Rama Trade Centre, Above Axis Bank, Opp.- Rajiv Plaza, Bus Stand Road, Bilaspur, Tah. & Distt.- Bilaspur, Chhattisgarh

… Appellant

versus

1. Savitri Bai Raj D/o Medani Singh, Aged About 24 Years R/o Vill. Tifra, Tah. & Distt.- Bilaspur, Chhattisgarh

2. Amit Kumar Minj S/o R. Minj, Aged About 31 Years R/o H.No.188, Naktikhar, P.O.- Godhi, Tah. & Distt.- Korba, Chhattisgarh (Driver Cum Owner Of Bolero No. C.G./12- A E / 8058)

... Respondents

MAC NO. 600 OF 2016

- The New India Assurance Co. Ltd. Through Its Divisional Manager, Divisional-Office, IInd Floor, Rama Trade Centre, Above Axis Bank, Opp.- Rajiv Plaza, Bus Stand Road, Bilaspur, Tah. & Distt.- Bilaspur, Chhattisgarh

… Appellant

versus

1. Heeramani Nagwanshi Wd/o Late Sh. Sukhnath Nagwanshi, Aged About 48 Years
2. Manju Nagwanshi D/o Late Sh. Sukhnath Nagwanshi, Aged About 28 Years
3. Sanju Nagwanshi D/o Late Sh. Sukhnath Nagwanshi, Aged About 26 Years
4. Sunil Nagwanshi S/o Late Sh. Sukhnath Nagwanshi, Aged About 18 Years
   Respondent No. 1 to 4 all are R/o Tifra, Tah. & Distt.- Bilaspur (CG)
5. Amit Kumar Minj S/o R. Minj, Aged About 31 Years R/o H.No. 188 Naktikhar, P.O.- Godhi, Tah. & Distt.- Korba, Chhattisgarh (Driver Cum Owner Of Bolero No. C.G.-12-A E-8058)

... Respondents

MAC NO. 1169 OF 2017

- The New India Assurance Co. Ltd. Through Its Divisional Manager, Divisional Office, SADA Complex, Transport Nagar, Korba, Tahsil & District Korba, Chhattisgarh.

... Appellant

versus

1. Jageshwar Singh S/o Chhat Singh, Aged About 59 Years Caste Kanwar, R/o Village Kurudih, Tahsil & District Korba (CG)
2. Meena Bai W/o Hetram, Aged About 35 Years R/o Manikpur Jhopadi, Near SECL Work Shop, Tahsil & District Korba (CG)
3. Manmohan, S/o Jageshwar, Aged About 31 Years R/o Village Kurudih, Tahsil & District Korba (CG)
4. Rahani Bai W/o Sukhnandan, Aged About 28 Years R/o Village Pantora, Tahsil Baloda, District Janjgir Champa (CG)
5. Amit Minj S/o Shri R. Minz, Aged About 30 Years R/o Village Naktikhar, Police Station Balko Nagar, Tahsil & District Korba (CG)

... Respondents

MAC NO. 1177 OF 2017

- The New India Assurance Company Limited Through Its Divisional Manager, Divisional Office, SADA Complex, Transport Nagar, Korba, Tahsil & District Korba (CG)

... Appellant

versus

1. Smt. Kamta Bai Wd/o Late Sagar Singh, Aged About 24 Years
2. Ku. Manasi D/o Late Sagar Singh, Aged About 9 Years
3. Vivek Kumar S/o Late Sagar Singh, Aged About 4 Years
4. Ku. Ishika D/o Late Sagar Singh, Aged About 1 Year
   Res. No. 2 to 4 are minor through their mother- Smt. Kamta Bai (Res. No.1)
5. Lakhan Singh Kanwar S/o Late Tirith Ram Kanwar, Cast Kanwar

Res. No. 1 to 5 all are R/o Village Kurudih, Police Station Urga, Tahsil & District Korba, Chhattisgarh.

6. Amit Singh S/o Shri R. Minz, Aged About 30 Years R/o Village Naktikhar, Police Station Balko Nagar, Tahsil & District Korba (CG)

... Respondents

MAC NO. 1199 OF 2017

- The New India Assurance Co. Ltd. Through Its Divisional Manager, Divisional Office, SADA Complex, Transport Nagar, Korba, Tahsil & District Korba Chhattisgarh

... Appellant

versus

1. Saniayro Bhagat Wd/o Late Satar Bhagat, Aged About 55 Years
2. Parwati Bhagat, D/o Late Satar Bhagat, Aged About 35 Years
3. Meera Bhagat, D/o Late Satar Bhagat, Aged About 28 Years
4. Maya Bhagat, D/o Late Satar Bhagat, Aged About 23 Years
5. Manisha Bhagat, D/o Late Satar Bhagat, Aged About 21 Years
   Res. No. 1 to 5 all are R/o Village Patharri Para, Behind CSEB Colony, Out Post Rampur Korba, Tahsil & District Korba (CG)
6. Amit Minj S/o Shri R Minz, Aged About 30 Years R/o Village Naktikhar, Police Station Balko Nagar, Tahsil & District Korba (CG)

... Respondents

MAC No. 1176 Of 2017

- The New India Assurance Co. Ltd. Through Its Divisional Manager, Divisional Office, S A D A Complex, Transport Nagar, Korba, Tahsil & District Korba Chhattisgarh

... Appellant

versus

1. Firatram S/o Late Bhoklu, Aged About 42 Years
2. Dheeru, S/o Bhoklu, Aged About 37 Years
   Both are R/o Village Kurudih, Police Station Urga, Tehsil & District Korba (CG)
3. Amit Kumar Minj, S/o Shri R. Minz, Aged About 30 Years R/o Village Naktikhar, House No. 188, Post Office Godhi, Police Station Balko Nagar, Tehsil & District Korba Chhattisgarh

... Respondents

MAC NO. 1198 OF 2017

- The New India Assurance Co. Ltd. Through Its Divisional Manager, Divisional Office, S A D A Complex, Transport Nagar, Korba, Tahsil & District Korba, Chhattisgarh

... Appellant

versus

1. Rajendra Singh Gond S/o Late Pratap Singh Aged About 19 Years
2. Dilip Singh S/o Late Pratap Singh, Aged About 18 Years
3. Ku. Jyoti D/o Late Pratap Singh, Aged About 13 Years, Minor, Through Her Brother Rajendra Singh (Res.No.1)
   All are Gond by caste, R/o Village Kurudih, Dodkakhar, Tahsil & District Korba, Chhattisgarh.
4. Amit Kumar Minj S/o Shri R. Minjz, Aged About 31 Years R/o Village Naktikhar, Police Station Balko Nagar, Tahsil & District Korba (CG)

... Respondents

Mr. Dashrath Gupta, Advocate, for the Appellant-Insurance Company, in all the appeals.
Mr. Goutam Khetrapal, Advocate, for Respondents-Claimants, in MAC Nos. 402, 403 & 600 of 2016.
Mr. Govind Ram Miri, Advocate, for Respondent-Driver, in MAC Nos. 402, 403 & 600 of 2016.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/09/2017

1. The present nine appeals under Section 173 of the Motor Vehicles Act, 1988, have been filed by the Insurance Company assailing six awards passed by the 1st Additional Motor Accident Claims Tribunal, Korba and three awards passed by the 9th Motor Accident Claims Tribunal, Bilaspur.

2. Since the nine claim cases decided by the two Tribunals arise out of the same accident and the grounds of challenge by the Insurance Company being common, this Court intends to decide these nine appeals, preferred by the Insurance Company assailing each of the awards, by this common judgment.

3. MAC Nos. 1168/2017, 1169/2017, 1177/2017, 1199/2017, 1176/2017 and 1198/2017 arise out of six different claim cases, i.e., Motor Accident Claim Case Nos. 27/2014, 26/2014, 23/2014, 41/2014, 22/2014 and 21/2014 respectively filed before the 1st Additional Motor Accident Claims Tribunal, Korba and all of which have been decided on the same day, i.e., on 29.4.2017. MAC Nos. 402/2016, 403/2016 and 600/2016 arise out of three different Motor Accident Claim Cases, i.e., 100/2014, 97/2014 and 102/2014 respectively decided by the 9th Motor Accident Claims Tribunal, Bilaspur on the same day, i.e., vide awards dated 30.11.2015.

4. Vide the two impugned awards passed by the two different Tribunals, the learned Tribunals in the proceedings under Section 166 of the Motor Vehicles Act have passed awards in favour of the Respondents-

Claimants awarding them compensation to the tune as envisaged in the column herein under, fastening the liability jointly and severally upon the Owner-cum-Driver and Insurance Company to pay the compensation awarded:

S.N.	MAC	Claim Case	Tribunal	Date of Award	Compensation Awarded	Interest
1.	1168/2017	27/2014	1st AMACT, Korba	29/04/2017	Rs. 4,30,000/-	6% p.a.
2.	1169/2017	26/2014	--do--	29/04/2017	Rs. 2,78,000/-	6% p.a.
3.	1177/2017	23/2014	--do--	29/04/2017	Rs. 7,68,500/-	6% p.a.
4.	1199/2017	41/2014	--do--	29/04/2017	Rs. 2,32,000/-	6% p.a.
5.	1176/2017	22/2014	--do--	29/04/2017	Rs. 1,34,000/-	6% p.a.
6.	1198/2017	21/2014	--do--	29/04/2017	Rs. 4,10,000/-	6% p.a.
7.	402/2016	100/2014	9th MACT, Bilaspur	30/11/2015	Rs. 5,29,000/-	7.5% p.a.
8.	403/2016	97/2014	--do--	30/11/2015	Rs. 2,85,000/-	7.5% p.a.
9.	600/2016	102/2014	--do--	30/11/2015	Rs. 39,38,052/-	7.5% p.a.
Grand Total					**Rs. 70,04,552/-**	

5. The present appeals have been filed by the Insurance Company questioning the liability of payment of compensation which has been fastened upon Insurance Company.

6. It is a case where nine deceased persons, named, Ramayan Bai, Sabina Markam, Amrotin Bai, Sukhnath Nagwanshi, Sonkunwar, Sagar Singh, Satar Bhagat, Sukwara Bai & Laxmin Bai succumbed to the injuries sustained when the Bolero Jeep, bearing Registration No. CG12/AE/8058, in which they were travelling dashed against a bridge on 23.1.2014. Respondent-Amit Minj was the driver-cum-owner and the Appellant-Insurance Company was the insurer of the said Bolero Jeep at the time of accident.

7. The challenge to the impugned awards is the fact that the owner of the offending vehicle was operating the said vehicle in violation of the policy conditions. According to the learned Counsel for the Insurance Company, the offending vehicle was insured for private use but the same was being used for taxi purpose and therefore there is a breach of policy condition and for which the Insurance Company cannot be held liable for payment of compensation. The second ground of challenge is that at the time of accident the offending vehicle insured by the Insurance Company was being plied with passengers much beyond the sitting capacity of the vehicle. According to the Insurance Company, since the offending vehicle was a Bolero Jeep, the sitting capacity of the vehicle was 9 inclusive of driver whereas in the instant case there were more than 9 passengers excluding the driver, which again would reflect the breach of policy condition inasmuch as running the vehicle beyond its sitting capacity. It was also argued that since the sitting capacity of the offending vehicle was of 9, the coverage of risk also would be restricted only to 8 as the driver in the instant case, i.e., the owner of the offending vehicle, who was also driving the offending vehicle, had a miraculous escape from the accident. The Insurance Company thus can only be fastened with the liability of payment of compensation to only 8 of the deceased persons. Last contention of the Insurance Company is that the driver, who was also the owner of the vehicle, was under the influence of alcohol at the time of accident, which again would be a violation of the Motor Vehicles Act as also a breach of policy condition. The Insurance Company thus prayed for the impugned awards to be set aside/quashed to the extent of liability being fastened upon the Insurance Company and in turn the liability may be fastened upon the owner of the offending vehicle. In support of its contentions, the Insurance Company has also relied upon the decision of the Hon'ble Supreme Court in the case of **Oriental Insurance Company Limited** Vs. **Premlata Shukla & Ors.**, **2007 (3) T.A.C. 11 (S.C.)**.

8. Learned Counsel appearing for the Claimants as well as learned Counsel for the Owner-cum-Driver however oppose the appeals and submit that the appeals of the Insurance Company do not have any substance inasmuch as there is no evidence on record with which contentions of the Insurance Company can be said to have been proved or established and therefore prayed for the dismissal of the appeals.

9. Having heard the contentions put forth on either side, some of the admitted facts as it stand are that:

(i) An accident took place on 23.1.2014 when the deceased persons in each of the cases were travelling in the Bolero Jeep, bearing Registration No. CG12-AE/8058 owned by Respondent-Amit Minj, who was himself driving the Bolero Jeep dashed against a bridge and in the process the deceased persons 9 in number succumbed to the grievous injuries that they had sustained.

(ii) The legal representatives of each of the deceased persons filing claim case under Section 166 of the Motor Vehicles Act.

(iii) The Tribunals vide the impugned awards passing orders in favour of the Respondents-Claimants.

(iv) Since the offending vehicle was duly insured, the liability of payment of compensation was fastened upon the Insurance Company.

10. In view of the aforesaid undisputed facts, what now has to be seen is, whether the grounds raised by the Appellant-Insurance Company have sufficient force or not?

11. So far as the offending vehicle being used for taxi purpose is concerned, the only document which is being harped upon by the Insurance Company is the Dehati Nalishi which has been produced during the course of hearing before the Tribunal where the lodger of the Dehati Nalishi has given a statement of the deceased persons travelling in the Bolero Jeep in the capacity of a passenger on payment of fare. However, when we look into other evidence which have come, the said lodger of the Dehati Nalishi has not been examined before the Tribunal neither is there any suggestions given by the counsel for the Insurance Company in the course of cross-examining the Claimants so far as the deceased persons travelling as a paid passenger. What also reflects is that the witness who has been examined on behalf of the Insurance Company is also silent on this issue. In the absence of any such evidence, the contention of the Insurance Company loses its force to interfere with the impugned awards only on this ground. Only because the Dehati Nalishi has been brought on record and also has been exhibited, by itself cannot be treated as a substantive piece of evidence to accept the contention of the Insurance Company with no supportive or corroborative evidence. The grounds raised by the Insurance Company thus are negated.

12. So far as the case of **Premlata Shukla** (supra) which has been relied upon by Insurance Company, the facts of the said case are itself sufficient to hold that the said judgment is distinguishable.

13. In the aforesaid judgment, the criminal case against the driver of the truck involved in the accident was closed by the police authorities as during the course of investigation the alleged truck involved in the accident could not be traced and the Tribunal for the reason that the accident could not be proved had dismissed the claim application. Whereas, in the instant case, the criminal case has not been dropped and a charge-sheet has also been filed before the appropriate court. Further, in **Premlata Shukla's** case, the claimants as well as the respondents both had relied upon the FIR whereas in the instant case the claimants have not raised their claim on the basis of Dehati Nalishi; neither have they tried to establish the accident by virtue of Dehati Nalishi. Thus, the said judgment in **Premlata Shukla's** case would not be applicable in the given facts and circumstances of the present case.

14. So far as the contentions of the Insurance Company of the driver having been in a condition of intoxication, that is, under the influence of alcohol, this Court does not find any strong evidence or material available in the record to support the claim of the Insurance Company. Further, the criminal case which has been registered against the driver-cum-owner of the offending vehicle also does not have a charge of violation of Section 185 of the Motor Vehicles Act but have been simply prosecuted for the offence under Section 279, 304A, 337 and 338.

15. So far as the ground of the Bolero Jeep being operated with more number of persons than the sitting capacity is concerned, this Court is of the opinion that the said by itself cannot be so strong case for exonerating the Insurance Company of its liability, particularly when there is no evidence whatsoever to attribute the accident to have occurred because of the excess number of persons travelling in the Jeep.

16. However, the second ground which has been raised by the Insurance Company seems to have some force inasmuch as the Insurance Company would be liable to indemnify only those number of persons for which the premium has been received, that is, the number of persons equal to the sitting capacity of the vehicle, which in the instant case is 9 inclusive of driver, and since the driver is not one among the Claimants, the claim of the Insurance Company would be restricted to indemnifying the owner in respect of 8 of the Claimants and not for all the 9 as has been awarded by the Tribunal. This view of the Court is for the reason that the Tribunal at Korba had been informed of only one claim case having been decided by the Tribunal at Bilaspur and therefore under the presumption that even if that one case is taking into consideration the total number of claim cases would be 7 whereas there were 3 cases which were decided by the Tribunal at Bilaspur, making the total claim cases to be 9.

17. At this juncture, it would be relevant to take note of the decision of the Hon’ble Supreme Court in the case of **National Insurance Company Limited** Vs. **Anjana Shyam & Ors, 2007 (7) SCC 445**, which again was in respect of the claims raised by 90 persons and the indemnification was for 42 persons only. The Hon'ble Supreme Court in the said case reached to the conclusion that the insurance company is liable to indemnify only 42 claims out of the 90 claim cases. The Hon'ble Supreme Court however while deciding the matter has held as under :

> **"23** 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."

18. Thus, from the aforesaid paragraph it is clear that the Hon'ble Supreme Court had ordered for the award pertaining to 42 number of cases starting from the highest amount of compensation awarded in a descending order and the sum total of said amount was held to be distributed proportionately to all the 90 claimants with a liberty to claim the difference of amount by initiating appropriate legal proceeding against the owner of the vehicle.

19. In the instant case also undisputedly the number of persons covered under the policy was 8 + driver. The driver in the instant case is not the claimant. In fact, the driver and owner is the same person and who had a miraculous escape in the accident. Thus, there are only 8 persons who have been insured by the owner and for whom the liability would be that on the Insurance Company and for one of the award the entire liability exclusively would be upon the owner of the vehicle.

20. Applying the decision of the Hon'ble Supreme Court in **Anjana Shyam** (supra), if we take into account the the amount of compensation starting from the highest towards the lowest, it reflects that the minimum compensation which has been awarded by the Tribunal is in respect of the Claim Case No.22/2014, that is MAC No. 1176/2017, where the compensation awarded is only Rs.1,34,000/- with 6% interest per annum.

21. If we apply the analogy and principles laid down in **Anjana Shyam** (supra), we would require to deduct proportionate amount from the other 8 awards and make payment in favour of the claimant in one case i.e. Claim Case No.22/2014. But, at the same time, it would lead to 9 different claim cases being again filed by the respective claimants to claim the difference of amount from the owner. This would lead to or result in multiplicity of litigation.

22. In the facts and circumstances of the present case, this Court is of the opinion that since undisputedly the policy which was issued by the Insurance Company was covering the risk of 9 persons which is inclusive of driver, let the Insurance Company also discharge the liability of payment of compensation in the 9th case also, i.e., Claim Case No.22/2014 (arising out of MAC No.1176/2017) of an amount of Rs.1,34,000/- with interest and this amount may ultimately be recovered by the Insurance Company by initiating appropriate recovery proceedings against the owner. Such a course would also avoid multiplicity of litigation. Even if the Insurance Company files a case it would be only one or else it may give rise to 9 different set of cases by the claimants against the owner, claiming for difference of amount. In addition, the distribution to be made proportionately among the 9 claims from the amount of total compensation payable from the highest 8 awards would also be a cumbersome exercise.

23. Thus, the appeal preferred by the Insurance Company deserves to be and is accordingly dismissed insofar as MAC Nos. 1168/2017, 1169/2017, 1177/2017, 1199/2017, 1198/2017, 402/2016, 403/2016 and 600/2016 having the maximum amount awarded. However, MAC No.1176/2017, arising out of Claim Case No.22/2014, is allowed in part, to the extent that the Insurance Company shall deposit the amount of compensation, but it shall have liberty to recover the same from the owner.

Sd/-
(P. Sam Koshy)
Judge

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