HON'BLE SRI JUSTICE M.S.K.JAISWAL

<u>M.A.C.M.A.Nos.964, 984, 985, 986, 987, 989, 990, 991, 999 & 1000 of 2010</u> & <u>CROSS OBJECTIONS (SR) No.5647 of 2010</u>

<u>COMMON JUDGMENT:</u>

These 10 appeals arise out of different O.Ps, viz., O.P.Nos.341, 349, 347, 348, 350, 346, 344, 351, 343 & 342 of 2004, filed by the claimants who suffered loss of deaths of 8 persons and two persons sustained injuries in the same accident said to have taken place on 10.01.2003, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Mahabubnagar at Gadwal (for short “the Tribunal”).

2. The brief facts of the cases are that the deceased and injured persons on 10.01.2003 at 10.15 a.m while traveling in an auto bearing registration No.AP22T-8749 and proceeding towards Kaukuntla and when reached at level crossing gate between Devarkadra and Kaukuntla, the driver of the auto drove the Auto in a rash and negligent manner and dashed against rail diesel engine coming from Mahabubnagar side, as a result, the driver of the Auto and 8 other persons died on the spot and two persons sustained multiple injuries. The legal heirs of the deceased persons and injured persons filed claim petitions before the Tribunal claiming compensation.

3. The appellants/Insurance Company filed the counters denying the averments of the claim petitions and its liability. It is further contended that the driver of the offending Auto was not having valid driving licence at the time of the accident and the vehicle was not roadworthy to ply. It is further contended that the 1st respondent in the OPs is not the registered owner of the offending Auto and has no insurable interest and the accident took place

due to the rash and negligence driving of the driver of the rail engine. It is further contended that the policy does not cover the risk of the deceased persons and that the owner of the offending vehicle had violated the terms and conditions of the policy by entrusting the vehicle to a person who carried more number of persons than permitted capacity.

4. The Tribunal clubbed all the OPs filed by the claimants and conducted joint trial and let in common evidence. On behalf of the claimants, P.Ws.1 to 11 were examined and got marked Exs.A.1 to A.29. On behalf of the Insurance Company, RW.1 was examined and Exs.B1 to B6 were marked.

5. The Tribunal, on consideration of the oral and documentary evidence, has allowed the OPs filed by the claimants and awarded compensation, as detailed as detailed below, while dismissing the OP filed by the legal representatives of the deceased driver of the offending vehicle. Questioning the said awards, the appellant-Insurance Company filed these 10 appeals. The claimants in O.P.No.342/2004 filed Cross Objections (SR) No.5647/2000 in MACMA No.1000/2010.

Sl. No.	O.P.No.	Death/Injured	Compensation awarded	MACMA/Cross Objections No.
01.	OP.341/2004	Death of one Keerthi, aged 15 years	Rs.77,000/-	MACMA.964/2010
02.	OP.349/2004	Death of one Srinivasa Raju, aged 22 years	Rs.1,77,000/-	MACMA.984/2010
03.	OP.347/2004	Injured-claimant	Rs.25,000/-	MACMA.985/2010
04.	OP.348/2010	Death of one Laxmi, aged 25 years	Rs.1,87,000/-	MACMA.986/2010
05.	OP.350/2004	Death of one Burappa, aged 40	Rs.1,62,000/-	MACMA.987/2010

		years		
06.	OP.346/2004	Death of Master Ravi, aged 2 years	Rs.27,000/-	MACMA.989/2010
07.	OP.344/2004	Death of Kum.Kavitha, aged 20 years	Rs.1,77,000/-	MACMA.990/2010
08.	OP.351/2004	Death of Kum.Rameshwari, aged 19 years	Rs.1,67,000/-	MACMA.991/2010
09.	OP.343/2004	Injured-Claimant	Rs.25,000/-	MACMA.999/2010
10.	OP.342/2004	Death of one Nirmala, aged 25 years	Rs.2,28,000/-	MACMA.1000/2010 & Cross Objections (SR) No.5647/2010 filed by claimants with delay of 2254 days
11.	OP.345/2004 (filed by LRs of driver of the offending Auto)	Death of driver-Amarender Reddy of the offending Vehicle	-dismissed-	--

6. It is a tragic case where the deceased Amarender Reddy, whose legal heirs filed O.P.No.345/2004 before the Tribunal, was driving the Auto bearing registration No.AP22T-8749 on 10.01.2003, and at that time there were as many as 10 passengers traveling in the Auto as against the permitted capacity of three passengers. The said auto was owned by M/s.Chaithanya Youth Association, represented by V.Ramulu, Rayapally village, who was arrayed as respondent No.1 in the O.P. At about 10.15 a.m when the said auto was trying to cross the railway level crossing, probably unmanned, a diesel engine coming on rail track dashed against the auto, killing as many as 9 people, including the driver of the auto and injuries to 2 persons.

7. The contention of the claimants is that the accident was solely due to rashness and negligence on the part of the deceased driver of the auto and hence the claims.

8. The owner of the auto did not contest the claim petitions and the appellant insurance company resisted the claims on the grounds that the accident was due to rashness and negligence on the part of the driver of the rail engine, that there was also negligence on the part of the deceased driver of the auto in overloading the passengers in the auto and that the driver of the auto was not possessing valid driving licence.

9. The objections of the insurance company were resisted and repelled by the claimants and the Tribunal, after appreciating the oral and documentary evidence on record, held that the insurance company cannot absolve its liability to pay the compensation for the claimants and held that it is liable.

10. Upon perusing the oral and documentary evidence, I see no reason to differ from the findings of the Tribunal on this aspect, which are based on the oral and documentary evidence on record.

11. In so far as MACMA No.1000/2010 is concerned, it arises out of the award in O.P.No.342/2004, which is in respect of death of one Nirmala, aged 25 years, and the Tribunal awarded compensation of Rs.2,28,000/-. The claimants have filed Cross Objections (SR) No.5647 of 2010, claiming enhancement of compensation for the death of the deceased Nirmal.

12. It is contended that the Tribunal awarded Rs.2,28,000/- as against the claim of Rs.3,00,000/- by applying wrong multiplier. Since the deceased Nirmala is aged about 25 years, the proper multiplier should be '18'. The deceased was working as teacher by the time of accident and hence her future prospects are also need to be considered.

13. There is sufficient force in the submissions made by the claimants and therefore, the cross objections are allowed, enhancing the compensation amount awarded to the claimants in O.P.No.342/2004, from Rs.2,28,000/- to Rs.3,00,000/- The deceased was earning Rs.3,000/- p.m and not married. The annual income comes to Rs.36,000/- and if this is multiplied by '18', it comes to Rs.6,48,000/- and if half of it is deducted towards personal expenses, the loss of dependency is Rs.3,24,000/-.

14. The learned counsel for the appellant-insurance company submitted that though unfortunately 10 people have laid their claims for the death of 9 people and injuries to 2 others, the Tribunal has dismissed the claim in so far as the driver of the insured auto is concerned. The auto was admittedly insured by the appellant and it was only for three passengers. Unfortunately, the deceased driver was carrying as many as 11 people in the auto when the accident took place. Therefore, the learned counsel submitted that the liability of the insurance company cannot exceed the claim of three persons and for the rest of the claimants, the amount has to be recovered from the owner of the auto.

15. In support of this contention, the learned counsel for the appellant relied upon the decision of the Supreme Court in *National insurance Co.Ltd. v. Anjana Shyam*[1]. In the case before the Apex Court, a stage carrier bus was involved and as many as 90 passengers were traveling in the bus, which fell in the nalah, leading to the death of 26 persons and injuries to 63 others. The insurance company therein has covered the risk of only 42 passengers. The Apex Court took into consideration the fact that the Act is intended for the benefit of the third parties with a view to ensure that they receive the fruits of the award obtained by them straight away with an

[1] 2007 ACJ 2129

element of certainty and not to make them wait for a prolonged recovery proceedings as against the owner of the vehicle. It further observed that the contract between the insurance company and the owner still remains and the parties are governed by the terms of the contract. Taking into consideration the relevant provisions, the Apex Court held that the insurance company can be made liable only in respect of the number of passengers for whom the insurance was taken under the Act and not in respect of other passengers involved in the accident in case of overloading. Having observed so, the Supreme Court in paragraphs-16 and 17 held as under:

> "16. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct

distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately.

17. In these cases, we find that this Court has not issued notices to the claimants. We are therefore not in a position to vary the decision of the High Court as regards the claimants. But, we have clarified the law on the question and we grant the insurance company a decree to recover the excess amount that it has deposited, from the owner, who has been issued notice and who has contested these appeals. Obviously, the principle indicated by us here will have to be applied by the Tribunal in the case from which the appeal against the interim award has been filed by the insurance company.

16. It is manifest from the above authority that the insurance company cannot be mulcted with the liability for passengers over and above that are insured and the procedure to be adopted in such case is to take the awards of the passengers which are higher and by adopting a descending method, the awards of the highest claimants should be added and that will the liability of the insurance company. After doing so, the said amount has to be deposited by the insurance company which has to be apportioned proportionately amongst the other passengers and their awards need to be partially satisfied. For the rest of the amounts, the owner of the offending vehicle has to be made liable and the claimants can recover the balance amount from the owner of the crime vehicle.

17. In the instant case, as already stated, as many as 10 claims were made for the death of 8 people and injuries to 2 people. The amounts awarded by the Tribunal have been extracted supra. Three of the highest awards are in respect of O.P.No.348/2010 corresponding to

MACMA.No.986/2010, in which a sum of Rs.1,87,000/- was awarded, O.P.No.344/2004 corresponding to MACMA No.990/2010, in which a sum of Rs.1,77,000/- was awarded, and O.P.No.342/2004 corresponding to MACMA No.1000/2010, in which the claim has been enhanced to Rs.3,00,000/-. The above three amounts if added, it comes to Rs.6,64,000/-. The total amount awarded to all the claimants in the 10 OPs works out to Rs.13,24,000/- Out of the said amount, the liability of the insurance company can be limited to only Rs.6,64,000/-. The rest of the amount of Rs.6,60,000/- is required to be recovered by the claimants from the owner of the offending auto.

18. For the sake of more clarity, the following tabular form is prepared, showing the amounts awarded by the Tribunal, as confirmed/enhanced by this court, out of which, the proportionate shares which each of the claim petitioner will get out of the amount of Rs.6,64,000/- to be deposited by the insurance company and the amount to be recovered from the owner of the offending auto, totaling to Rs.6,60,000/-

MACMA No.	O.P.No.	Awarded amount by the Tribunal Rs.	Proportionate share which the appellant-insurance company is liable to pay Rs.	Balance amount that need to be recovered by the claimants from the owner of the offending Auto Rs.
964/2010	341/2004	77,000-00	38,616-00	38,384-00
984/2010	349/2004	1,77,000-00	88,766-00	88,234-00
985/2010	347/2004	25,000-00	12,537-00	12,463-00
986/2010	348/2004	1,87,000-00	93,782-00	93,218-00
987/2010	350/2004	1,62,000-00	81,245-00	80,755-00
989/2010	346/2004	27,000-00	13,540-00	13,460-00

990/2010	344/2004	1,77,000-00	88,767-00	88,233-00
991/2010	351/2004	1,67,000-00	83,760-00	83,240-00
999/2010	343/2004	25,000-00	12,537-00	12,463-00
1000/2010	342/2004	3,00,000-00	1,50,450-00	1,49,550-00
Total three highest		(6,64,000-00)		
Total:		13,24,000-00	6,64,000-00	6,60,000-00

19. It is reiterated that the three highest awards have been taken for the purpose of fastening the liability of the insurance company, since its liability is only for three passengers in respect of the auto and the amount shall be distributed proportionately to all the claimants in 10 OPs, and the claimants have to recover the balance amount from the owner of the offending vehicle, as has been held by the Supreme Court in the aforementioned decision.

20. It is also submitted by the appellant insurance company that the insurance company has already deposited 50% of the awarded amount in pursuance to the interim orders by this Court, which appears to be more than its liability now determined, and the claimants are also permitted to withdraw the same. If the said amount is deposited by the insurance company, which exceeds its liability now determined, the insurance company shall not recover the same from the claimants, if they have already withdrawn the amounts, and if the amounts are lying with the Tribunal, the insurance company can withdraw the amount, which is in excess of its liability now determined.

21. The Tribunal is directed to meticulously work out the liability, as stated above, and proceed to disburse the amounts, if not already withdrawn

by the claimants, and the claimants are entitled to recover the balance amount from the owner of the offending auto together with interest.

22. All these MACMAs are accordingly disposed of, and the Cross Objections (SR) No.5647/2010 are allowed. No order as to costs.

M.S.K.JAISWAL, J

Date: 17th August, 2017
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