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

M.A.C.M.A.Nos.202/2010, 1813/2009, 3748/2009 & 477/2010

COMMON JUDGMENT:

These 4 appeals arise out of different O.Ps, viz., O.P.Nos.661, 376, 306 & 307 of 2005, filed by the claimants who suffered loss of deaths of 2 persons and two persons sustained injuries in the same accident said to have taken place on 05.04.2004, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Vizianagaram (for short "the Tribunal").

2. The brief facts of the cases are that the deceased and injured persons are said to be working as labourers. On 05.04.2004 at 11.30 p.m after loading the metal load at Lankavanipalem quarry on a lorry bearing registration No.AP31T9005 and while returning, the driver of the said lorry started the lorry in a rash and negligent manner at high speed without hearing the cries and cautions of the labourers, as a result, the lorry turned turtle near Musiram village, the labourers sustained multiple injuries, out of them, two persons succumbed to injuries and two persons sustained fracture 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 counters denying the averments of the claim petitions and its liability. It is further contended that the deceased persons and injured persons are not the labourers in the offending lorry as the said lorry is a heavy goods vehicle and there is no necessity of labourer for that vehicle. It is further contended that the owner of the offending vehicle has not intimated the alleged accident immediately to the appellant/insurance company and with the collusion of the owner of the offending vehicle, the claimants filed the claim petitions.

4. The Tribunal has disposed of the aforesaid four MVOPs individually on different dates, by recording oral and documentary evidence in each case on either side.

5. The Tribunal, on consideration of the oral and documentary evidence, has allowed the MVOPs filed by the claimants and awarded compensation, as detailed below. Questioning the said awards, the appellant-Insurance Company filed these 4 appeals.

Sl. No.	MVOP.No. & Date of Disposal	Death/Injured	Compensation awarded	MACMA/Cross Objections No.
01.	MVOP. No.661 of 2005 (29.10.2008)	Death of one Middi Demudu, aged 32 years	Rs.2,25,000/- with interest @9% p.a (against the claim of Rs.4,00,000/-)	MACMA.202/2010
02.	MVOP. No.376 of 2005 (02.12.2008)	Death of one Kona Eswara Rao, aged 28 years	Rs.2,09,000/- with interest @9% p.a (against the claim of Rs.3,00,000/-)	MACMA.1813/2009
03.	MVOP. No.306 of 2005 (10.10.2008)	Injured-claimant	Rs.50,000/- with interest @9% p.a (against the claim of Rs.1,00,000/-)	MACMA.3748/2009
04.	MVOP. No.307 of 2005 (29.10.2008)	Injured-claimant	Rs.1,50,000/- with interest @9% p.a (against the claim of Rs.1,50,000/-)	MACMA.477/2010

6. The only contention of the appellant-insurance company is that the Tribunal ought to have seen that the policy issued by the appellant insurance company is in respect of only two of the occupants of the lorry and the

liability cannot be fastened on it for the claim of 4 claim petitioners. In the accident, two persons died and two persons sustained injuries and 4 OPs were filed. Therefore, the grant of award by the Tribunal in all the 4 OPs and calling upon the appellant insurance company to satisfy the claimants is incorrect and is not in accordance with the terms and conditions of Ex.B1 policy and hence the appeal.

7. The learned counsel appearing for the claimants submitted that the awards of the Tribunal cannot be said to be erroneous and do not warrant any interference.

8. As noticed above, the accident took place on 05.04.2004 at about 11.30 p.m when the lorry was proceeding for the purpose of loading and unloading the metal and at that time four labourers were traveling in the lorry for loading and unloading purposes and due to rash and negligent driving of the driver of the lorry, it turned turtle, resulting in death of two persons and injuries to two others. Four OPs have been filed and the Tribunal awarded compensation, as stated above.

9. The fact that the accident took place due to rashness and negligence on the part of the driver of the lorry is not disputed. Similarly, the amounts awarded by the Tribunal are not seriously contested. The claimants also did not prefer any appeals for enhancement. Therefore, the awards of the Tribunal to the extent indicated above are liable to be confirmed.

10. However, the contentious aspect is as to whether the appellant-insurance company can be called upon to satisfy all 4 awards, even though Ex.B1 policy covered only two persons.

11. The learned counsel for the appellant-insurance company submitted that the offending lorry was admittedly insured by the appellant and it was only for two occupants. Unfortunately, the lorry driver was

carrying 4 people in the lorry when the accident took place. Therefore, the learned counsel submitted that the liability of the insurance company cannot exceed the claim of two persons and for the rest of the claimants, the amount has to be recovered from the owner of the lorry.

12. 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 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

[1] 2007 ACJ 2129

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.

13. 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.

14. In the instance case, two persons died and two persons sustained injuries. The Tribunal awarded compensation in 4 OPs, as stated above. Following the dictum of the Supreme Court, highest of two awards need to be taken into consideration. The Tribunal awarded Rs.2,25,000/- in MVOP.No.661/2005, corresponding to MACMA No.202/2010 for the death of one Middi Demudu. Similarly, the Tribunal awarded Rs.2,09,000/- in MVOP No.376/2005, corresponding to MACMA No.1813/2009 for the death of one Kona Eswara Rao. The Tribunal in other two OPs filed by the injured persons, viz., in MVOP.No.306/2005, corresponding to MACMA No.3748/2009, awarded a sum of Rs.50,000/- and in MVOP.No.307/2005, corresponding to MACMA No.477/2010, awarded a sum of Rs.1,50,000/-. The highest of two awards are Rs.2,25,000/- and Rs.2,09,000/-. These amounts are liable to be paid by the insurance company. The total amount awarded by the Tribunal in all 4 OPs is Rs.6,34,000/-, out of the said amount, the insurance company is liable to pay an amount of Rs.4,34,000/- being the two highest awards. The remaining amount of Rs.2,00,000/- has to be

recovered from the owner of the offending lorry. The amount liable to be paid by the insurance company has to be distributed proportionately amongst all the four claimants of the original petitions.

15. For the sake of more clarity, the following tabular form is prepared showing the amounts awarded by the Tribunal, as confirmed by this court in the present appeals, out of which, the proportionate shares which each of the claim petitioner will get out of the amount of Rs.4,34,000/- to be deposited by the insurance company and the amount to be recovered from the owner of the offending lorry, amounting to Rs.2,00,000/-

MACMA No.	MVOP 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.
202/2010	661/2005	2,25,000-00	1,54,022-00	70,978-00
1813/2009	376/2005	2,09,000-00	1,43,069-00	65,931-00
3748/2009	306/2005	50,000-00	34,228-00	15,772-00
477/2010	307/2005	1,50,000-00	1,02,681-00	47,319-00
Total two highest		(4,34,000-00)		
Total:		6,34,000-00	4,34,000-00	2,00,000-00

16. It is reiterated that two highest awards have been taken for the purpose of fastening the liability of the insurance company, since its liability is only for two passengers in respect of the offending lorry and the amount shall be distributed proportionately to all the claimants in 4 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.

17. 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.

18. 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 lorry together with interest.

19. These four MACMAs are accordingly disposed of. No order as to costs.

M.S.K.JAISWAL, J

Date: 17th August, 2017
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