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

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Decided on: 07.01.2020.

+ MAC.APP. 946/2019, CM APPL. 53897/2019 & CM APPL.
53898/2019

RAJ RANI ARORA

..... Appellant

versus

VASU & ORS (UNITED INDIA INSURANCE CO LTD)

..... Respondents

+ MAC.APP. 947/2019, CM APPL. 53900/2019 & CM APPL.
53901/2019

RAJ RANI

..... Appellant

versus

BIMLA & ORS (UNITED INDIA INSURANCE CO LTD)

..... Respondents

+ MAC.APP. 948/2019, CM APPL. 53903/2019 & CM APPL.
53904/2019

RAJ RANI ARORA

..... Appellant

versus

PRABHA & ORS(UNITED INDIA INSURANCE CO LTD)

..... Respondents

+ MAC.APP. 949/2019, CM APPL. 53906/2019 & CM APPL.
53907/2019

RAJ RANI ARORA

..... Appellant

versus

SUNITA & ORS (UNITED INDIA INSURANCE CO LTD

..... Respondents

+ MAC.APP. 950/2019, CM APPL. 53909/2019 & CM APPL.
53910/2019

RAJ RANI ARORA

..... Appellant

versus

MEENU & ORS (UNITED INDIA INSURANCE CO LTD)

..... Respondents

+ MAC.APP. 951/2019, CM APPL. 53912/2019 & CM APPL.
53913/2019

RAJ RANI ARORA

..... Appellant

versus

MEENU & ORS (UNITED INDIA INSURANCE CO LTD)

..... Respondents

Through: Mr. Amit Khemka and Mr. Manoj
Bhandari, Advocates for appellant.
Mr. Shoumik Mazumdar, Advocate
for insurance company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 53896/2019, CM APPL. 53899/2019, CM APPL. 53902/2019,
CM APPL. 53905/2019, CM APPL. 53908/2019 & CM APPL. 53911/2019
(for delay)

1. These applications seek condonation of delay in filing of the appeals.
2. It is the applicant's case that she was not informed by her counsel about the outcome of the claim petitions in the proceedings before the learned Tribunal and got to know about the liability only when the execution proceedings were initiated against her, whereafter she engaged another counsel to file these appeals.

3. The applicant is a business woman and surely is not as disadvantaged as an illiterate person. She would be expected to have pursued her litigation with more care and circumspection. She, however, pleads lapse on her counsel's part, in whom she had reposed faith.

4. Be that as it may, the case otherwise is good on merits and the dismissal of the appeals only on the ground of delay would result in miscarriage of justice. In the circumstances, the delay is condoned subject to the applicant paying the respondent-insurance company an amount of Rs. 25,000/- and planting 3,000 trees at the '*Insaaf Bagh*' area of the Central Ridge (an expense of roughly about Rs. 75,000/-). The applicant, shall appear before the DCF (South) on 31.01.2020, who shall indicate to her, the forest lands under his care where the trees shall be planted. The trees shall be of deciduous indigenous variety and they shall have a nursery age of three and a half years and shall have a minimum height of at least six feet.

5. The applicant will be free to water the trees for the next six months. Water will be supplied by the Forest Department, GNCTD. Depending upon the soil type and topography, the DCF may consider the following types of trees for plantation:-

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|-------------------------------|-------------------------------------|
| (i) Gular (Cluster Fig) | (ii) Kadamba (Burflower Tree) |
| (iii) Pilkhan (White Fig) | (iv) Jaamun (Black Plum) |
| (v) Bargad (Banyan Tree) | (vi) Mango |
| (vii) Amaltas (Golden Shower) | (viii) Mahua (Butter Tree) |
| [Indian Laburnum] | |
| (ix) Putranjiva | (x) Badh |
| (xi) Sagwan (Teak Wood) | (xii) Safed Siris (Albizia Procera) |
| (xiii) Kala Siris | (xiv) Anjeer |
| (xv) Kathal- Jackfruit | (xvi) Palash |
| (xvii) Arni | (xviii) Bistendu |

- | | |
|------------------------|----------------|
| (xix) Rohida | (xx) Medshingi |
| (xxi) Palash/Tesu/Dhak | (xxii) Hingot |
| (xxiii) Ronjh | (xxiv) Khejri |

6. Compliance Report alongwith photographs shall be filed both by the applicant and the DCF before the next date.
7. List for compliance on 16.03.2020.
8. The applications stand disposed-off in the above terms.

MAC.APP. 946/2019, CM APPL. 53897/2019 & CM APPL. 53898/2019, MAC.APP. 947/2019, CM APPL. 53900/2019 & CM APPL. 53901/2019, MAC.APP. 948/2019, CM APPL. 53903/2019 & CM APPL. 53904/2019, MAC.APP. 949/2019, CM APPL. 53906/2019 & CM APPL. 53907/2019, MAC.APP. 950/2019, CM APPL. 53909/2019 & CM APPL. 53910/2019 & MAC.APP. 951/2019, CM APPL. 53912/2019 & CM APPL. 53913/2019

9. These appeals impugn the award of compensation dated 16.02.2019 in six claim petitions numbered as MACT Nos. 1128-29-30-31-32-33/2017 passed by the learned MACT, on the ground that it has erred in fastening the liability of payment of compensation on the appellant/insured simply because the vehicle which met with the motor accident was insured to carry only 12 passengers, whereas 17 passengers were travelling in it at the time of the accident.

10. The question to be determined is: whether the carrying of the additional passengers contributed, in any way, to the motor vehicular accident. There is nothing recorded in the impugned judgment to show that the carriage of excess persons contributed to the accident. In the circumstances, the insured cannot be said to have committed such a

fundamental breach of the contract of insurance, so as to facilitate the insurer to resile from the contract or to reject the claim for indemnification. The law in this regard is settled in view of the dicta of the Supreme Court in *Lakhmi Chand vs. Reliance General Insurance*, (2016) 3 SCC 100, in which it was held that in order to avoid its liability, an insurer has to establish that there was a fundamental breach of policy that resulted in the contract ending. It further held that mere carrying of more passengers than the permitted capacity in a goods driving vehicle would not tantamount to fundamental breach of insurance policy. It held:

“16.the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company. In the instant case, the respondent Company has not produced any evidence on record to prove that the accident occurred on account of the overloading of passengers in the goods-carrying vehicle. Further, as has been held in B.V. Nagaraju [B.V. Nagaraju v. Oriental Insurance Co. Ltd., (1996) 4 SCC 647] that for the insurer to avoid his liability, the breach of the policy must be so fundamental in nature that it brings the contract to an end.”

11. Furthermore, in *National Insurance Co. Ltd. vs. Anjana Shyam*, (2007) 7 SCC 445, the same test was laid down. It was held that the insurer would be liable to the extent of the permitted number of passengers. A ‘passenger’ under section 147 (1) (b) (ii), Motor Vehicles Act, 1988, must be understood as a passenger authorised to be carried in the vehicle in its permitted user. It held that since there were no means of ascertaining as to which of the overloaded passengers constituted the passengers covered by

the insurance policy, the practical way forward would be to determine the compensation payable by the insurance company for the permitted number of passengers who were insured, however the higher of the amounts awarded would be paid. It held *inter alia* as under:

“20. In spite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The statute has made insurance obligatory in public interest and by way of social security and it has also provided that the insurer would be obliged to fulfil his obligations as imposed by the contract and as overseen by the statute notwithstanding any claim he may have against the other contracting party, the owner, and meet the claims of third parties subject to the exceptions provided in Section 149(2) of the Act. But that does not mean that an insurer is bound to pay amounts outside the contract of insurance itself or in respect of persons not covered by the contract at all. In other words, the insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract.

21. The High Court has considered only the aspect whether by overloading the vehicle, the owner had put the vehicle to a use not allowed by the permit under which the vehicle is used. This aspect is different from the aspect of determining the extent of the liability of the Insurance Company in respect of the passengers of a stage carriage insured in terms of Section 147(1)(b)(ii) of the Act. We are of the view that the Insurance Company can be made liable only in respect of the number of passengers for whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other passengers involved in the accident in a case of overloading.”

12. In the present case, there were two fatalities and four claims of injuries. Accordingly, the six claims being lesser than the permitted number

of twelve passengers, each of the compensation amounts shall be payable by the insurance company. The impugned order is modified to the extent that the compensation shall be paid by the insurer.

13. The awarded amount, if not already deposited, shall be deposited by the insurer before the learned Tribunal, within three weeks from the date of receipt of copy of this order, alongwith interest accrued thereon from the date of filing of the claim petition till its realization, to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

14. The statutory amount, alongwith interest accrued thereon, shall be returned to the appellant.

15. The appeals are disposed-off in the above terms.

JANUARY 07, 2020

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NAJMI WAZIRI, J

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