

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.940 OF 2010

1. Smt. Dwarkabai w/o. Shankar Gaikwad,
Age:35 years, Occ. Labour,
r/o. Risala Bazar, Hingoli,
Dist. Hingoli
 2. Shankar s/o. Aneba Gaikwad,
Age:47 years, Occ. Labour,
r/o. As above
- ..Appellants

Vs.

1. Gazan Fau Ullakhan Noorrukhan,
Age : 45 years, Occ. Business,
(owner of Jeep MH 29/2433)
r/o. Station Road, Ward No.17,
Darwah, Dist. Yeotmal
 2. News India Assurance Company Ltd.,
Through its Branch Manager,
1st Floor, Yerwara Building,
Yeotmal, Dist. Yeotmal
- ..Respondents

Mr.P.S.Agrawal, Advocate for appellants
Mr.P.C.Mayure, Advocate for respondent no.1
Mr.M.R.Deshmukh, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 07, 2021**

JUDGMENT :-

This appeal is directed against the judgment and award dated 29.12.2009 passed by Motor Accident Claims Tribunal, Hingoli

("the Tribunal", for short) in Motor Accident Claim Petition No.78 of 2003. Under the impugned award, the appellants herein, parents of the deceased-Balu, have been awarded a sum of Rs.2,00,000/- as compensation with interest thereon at the rate of 6% per annum. The owner of the offending vehicle was saddled with liability to pay the compensation. The insurer has been exonerated on the ground of the insured to have committed breach of the terms and conditions of the policy of insurance. The breach was in the nature of carrying the passengers in excess of the permissible limit.

2. The jeep bearing registration No.MH-29/2433 met with an accident on 22.05.2002. Balu, a ten years old son of the appellants herein, died in the said accident. There were 15 persons in the jeep when it met with the accident. The inmates were said to have suffered injuries.

3. Heard learned counsel appearing for the parties.

4. Mr.P.S.Agrawal, learned counsel for the appellants/claimants, would submit that a very meagre amount of compensation has been awarded to the appellants/parents of the deceased. He would further submit that the respondent-insurance

company ought not to have been exonerated of its liability to pay the compensation. The same are submissions advanced by learned counsel representing the owner of the vehicle involved in the accident, regarding exoneration of the insurer.

5. Mr.M.R.Deshmukh, learned counsel for the respondent-insurance company, would, on the other hand, submit that the vehicle had capacity to carry the passengers 5+1 in number. The vehicle was, however, found to have been carrying 15 passengers when it met with the accident. Under the policy of insurance, the risk of not more than 6 persons was covered. About 8/9 claim petitions were preferred by the injured. All have been allowed directing the respondent-insurance company to pay the compensation. The company has satisfied those awards. It has, thus, no liability to pay compensation to the appellants herein, since their claim is beyond the number of passengers whose risk was undertaken by the respondent – insurance company and other awards have already been satisfied. In support of his submission, learned counsel relied on the judgment of the Apex Court in the case of **United India Insurance Company Limited Vs. K.M.Poonam and ors., (2015)15 SCC 297.**

6. A ten years old boy of the appellants herein died in the accident. The Tribunal, after having relied upon the judgment of the Apex Court in the case of **Manju Devi and anr. Vs. Musafir Paswan and anr., 2005 ACJ 99**, granted a consolidated sum of Rs.2,00,000/- inclusive of no-fault liability amount. In the factual backdrop, this Court is not inclined to grant any more compensation on account of the assumed loss of dependency. However, a sum of Rs.40,000/- needs to be awarded to the appellants on account of loss of love and affection.

7. The respondent-insurance company has been exonerated by the Tribunal of its liability to pay the compensation since it was found that the jeep was carrying the passengers more than the permissible limit.

8. In the case of **National Insurance Co. Ltd. Vs. Anjana Shyam and ors., 2007 DGLS (SC) 933**, it has been observed:-

15. 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 fulfill 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. 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.

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."

9. In the case of **K.M.Poonam** (supra), it has been observed thus:-

Held, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle – Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned – Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice should deposit the total amount of compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect of their claims, with liberty to the Insurance Company to recover the amounts paid by it over and above the compensation amounts payable in respect of the persons covered by the insurance policy from the owner of the vehicle by putting the decree into execution – For the aforesaid purpose, the total amount of the six awards which are the highest shall be construed as the liability of the Insurance Company – After deducting the said amount from the total amount of all the awards deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company – The Insurance Company will not be required to file a separate suit in this

regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle.”

10. The copies of the awards passed in other claim petitions arising out of the same accident are not before this court. It is, therefore, not known as to, in fact, how much claim petitions were filed and allowed. Admittedly, the respondent-insurance company granted insurance cover for six passengers. It would, therefore, not be required to satisfy the claims more than six in number. In such a case, the Tribunal or this Court has to go by the directions of the Apex Court in the case of **Anjana Shyam** (supra).

11. The Apex Court’s judgment in the case of **Anjana Shyam** (supra) has been relied upon by learned counsel for the respondent-owner of the vehicle. The submission made by learned counsel on behalf of the respondent-insurance company that more than six claim petitions were filed and all of them have been satisfied, except the present one, has not been traversed by the owner of the vehicle. As such, it is a case whereat, the respondent-insurance company, inspite of having liability to satisfy the claims of six of the passengers only, was required to satisfy more than six. It would, therefore, necessarily be entitled to recover the excess amount from

the owner of the vehicle, which it was required to pay. The details thereof are not before this Court.

12. The present one is a death claim. Rest of the claims were said to be injury claims. As such, the amount in the present claim is necessarily more than the amount involved in the other claims. The respondent-insurance company, therefore, would be entitled to recover the excess amount from the owner of the vehicle. It will not be required to file a suit to recover the same. Admittedly, the insurance-company was under the obligation to satisfy the claims not more than six in number. If it has satisfied nine claims including the present one, then it will be entitled to recover the amount of three of the claims, which are of lower or lowest in value among nine claims it has satisfied. The respondent-insurance company can demonstrate the same before the executing Court/Tribunal and recover the excess amount from the owner of the vehicle, it was required to pay.

13. In the result, the appeal succeeds in terms of the following order:-

(i) The appeal is allowed. The amount of compensation is enhanced by Rs.40,000/- with interest thereon at the

rate of 6% per annum from the date of admission of this appeal i.e. 27.04.2010 to the date of payment thereof.

- (ii) The impugned judgment and award dismissing the claim petition against the respondent-insurance company is hereby set aside. The claim petition is allowed against the respondent-insurance company as well
- (iii) Respondent nos.1 and 2 are held to be jointly and severally liable to pay the entire amount under the impugned award.
- (iv) The respondent-insurance company to recover the excess amount, which it was required to pay, as has been observed in paragraph 12 above.
- (v) The amount in deposit, if any, with this Court or the Tribunal be paid to the appellants/claimants with interest accrued thereon, immediately.

[R.G. AVACHAT, J.]