

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM & ARUNACHAL
PRADESH)**

MAC. Appl. No.01 of 2017

Shri Langpu Tajak,

Son of Late Langpu Taja,

Resident of Damsite, Naharlagun

P/O, P/S Naharlagun, District Papum Pare,

Arunachal Pradesh, PIN-791110.

.....Appellant/Claimant.

Advocates for the Appellant:

Mr. T. Son,

Mr. T. Tarum,

Mr. L. Rupan,

Mr. N. Lamino,

Mr. Nabam Tata,

Mr. Karbia Natung,

-VERSUS-

1. Shri Habung Nobing,

Son of Sri Habung Payeng,

Resident of 'B' Sector, Itanagar,

P/O, P/S – Itanagar, District- Papum Pare,

Arunachal Pradesh, PIN- 791110.

2. The Divisional Manager,

Oriental Insurance Company Limited,

Takkar Complex, P/O P/S Naharlagun,
District – Papum Pare,
Arunachal Pradesh, PIN-791110.

Respondents/Opposite parties.

Advocates for the respondents:

Mr. U. Deka,
Mr. C. Modi,
Mr. T. Char,
Mr. A Perme,
Mr. P. Khong Khung,

:::BEFORE:::

HON'BLE MR JUSTICE MIR ALFAZ ALI

Date of hearing - **12.09.2017.**

Date of judgment - **12.09.2017.**

JUDGMENT & ORDER (ORAL)

Heard Mr. T. Son, learned counsel appearing for the appellant and Mr. P. Khong Khung, learned counsel appearing for the respondent.

2. This appeal under Section 173 of the Motor Vehicle Act, 1988, has been filed by the appellant/claimant, challenging the judgment and award, dated 16.11.2016, passed by the learned Member, Motor Accident Claims Tribunal, Papum Pare District, Yupia in MACT No.56/2013 and MACT No.22/2008 Yupia.

3. The undisputed facts, relevant for disposal of this appeal are that one Langpu Taje (since deceased) died in a motor vehicle accident, on 22.05.200, involving vehicle No.AR01-7190, owned by the respondent No. 1 herein, and insured with the respondent No. 2, the Oriental Insurance Company Ltd. The accident occurred due to rush and negligence driving by the driver of the offending vehicle. The legal heirs of the deceased preferred a claim petition before the MACT, Yupia and the learned MACT awarded `3,05,000/- (Three Lakhs Five Thousand) only, with interest @ 6% from the date of filing the claim petition. Respondent No. 1, the owner of the vehicle was saddled with the responsibility to satisfy the award.

4. The learned counsel appearing for the appellant submits that while determining the loss of dependency, learned tribunal failed to take into consideration the future prospect. The second submission of the learned counsel is that the vehicle was insured on the date of accident covering the third party risk; and therefore, the learned tribunal ought not to have saddled the responsibility with the owner of the vehicle to satisfy the award.

5. Learned counsel appearing for the respondent/Insurance Company submits that the vehicle was carrying passengers more than the permissible limit and thereby violated the condition policy. As the owner/insured violated the condition policy, the insurer was not liable to indemnify the insured; submits Mr. P. Khong Khung.

6. With regard to the addition of future prospect law is now a settled as held by the Apex Court in the case of ***Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr***, reported in, ***6 SCC 121***, and subsequently, in the case of ***Santosh Devi Vs. National Insurance Company Ltd. & Ors.***, reported in, ***(2012) 6 SCC 421*** that when the age of the deceased is below 40 years, 50% of the income has to be added as future prospect to the actual income and when the age is between the 40 and 50, 30% of the income is to be added as future prospect.

7. In view of the principle laid down by the Apex Court in the case of Santosh Devi, the tribunal ought to have added 50% the income of the deceased as future prospect, considering the age of the deceased. In the instant case, the age of the deceased was 17(seventeen) years and there is no dispute with regard to the age of the deceased. Thus, considering the age of the deceased and following the principle laid down by the Apex Court in the case of Santosh Devi, 50% of the income of the deceased is required to be added as future prospect. The claimant adduced evidence that Annual income of the deceased was `15000/-. With the addition of 50% of income to the real income, Annual income of the deceased would be `15000+7500=`22,500/-. The tribunal rightly deducted 1/3 of the income towards personal expenditure of the deceased. After deducting 1/3 towards personal expenditure of the deceased and applying multiply 18 with

reference to the age of the deceased, total loss of dependency would come to `15,000+`7500-1/3x18=`2,70,000/- . Thus, the enhanced compensation to which the claimant shall be entitled is assessed as under:

I.	Loss of dependency	- `2,70,000/-
II.	Funeral expenses	- `25,000/-
III.	Loss of consortium	- `1,00,000/-

Total - `3,95,000/-

8. Learned counsel for the appellant also urged for enhancement of interest. Tribunal granted 6% interest on the awarded amount. The Apex Court in ***Narendra Singh Vs. Nishant Sarma & Ors.***, reported in, ***(2015) 14 SCC 353***, while enhancing the interest from 6% to 9% observed as under:

"Further, an interest at the rate of 6% per annum on the compensation was awarded by the Tribunal which was enhanced to 7.5% by the High Court. The interest rates determined by both the Courts below are bad in law as per the legal principles laid down in MCD V. Upahaar Tragedy Victims Assn, wherein this Court has awarded interest at the rate of 9% per annum on the compensation awarded in favour of the appellants.

Applying the same legal principles, we grant the rate of 9% per annum, on the compensation awarded by this Court.”

Following the mandate of the Apex Court interest is enhanced to 9%.

9. The tribunal has observed that the vehicle was carrying passengers at the relevant time more than the permissible limit, which amounted to violation of the condition of policy and therefore, fixed the responsibility with the owner of the vehicle, the respondent No. 1, to satisfy the award. Contention of the learned counsel for the appellant is that offending vehicle having been duly insured, tribunal ought to have directed the Insurance Company to satisfy the award.

10. It is not disputed that the vehicle in the instant case was carrying passengers more than the permissible limit as per the policy. The law is now well settled in respect of liability of the insurance company to pay compensation, when there is a violation of the terms of the policy with regard to carrying passengers more than the permissible limit. In the instant case, the Tribunal found that the permissible limit of passengers was 36(thirty six) and the vehicle was carrying more than the permissible limit of passengers, in as such as, 48(Fourty Eight) passengers died and 19(Nineteen) passengers sustained injuries. There is no material before this Court and it is also not discernible from the impugned judgment that all the victims of the accident preferred claim petition before the MSCT, Yupia.

There are also no materials to show that all the victims actually preferred claim petition. Even if there was violation of the condition of policy by the owner of the vehicle, the Insurance Company is liable to satisfy the award, so far the claim of the third party is concerned, irrespective of the issue relating to violation of condition of policy between the insurer and the insured. Since there is no material on record to show, that the claimant was not within the permissible number of passengers or in other words there is no material to show that he boarded the vehicle as excess passengers, the claimant cannot be pushed to an uncertainty directing him to get the award from the owner of the vehicle, when evidently the offending vehicle was insured at the relevant time.

11. The Apex Court in the case of ***United India Insurance Company Vs. K. M. Poonam & Ors.***, reported in, ***(2015) 15 SCC 297***, while dealing with the situation of carrying excess passengers beyond the permissible limit, directed the insurance company to satisfy the award and then to recover the excess amount from the owner and observed as under:

"39. The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which arises is one of apportionment of the amounts to be paid, since there can be no pick and choose method to indemnify the five passengers,

excluding the driver, in respect of whom compensation would be payable by the insurance company, to meet the ends of justice we may apply the procedure adopted in Baljit Kaur case and direct that the insurance company should deposit the total amount of compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect to 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 person covered by the insurance policy from the owner of the vehicle, as was directed in Baljit Kaur case.

40. In other words, the appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not recovered by the insurance policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, 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 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.”

12. Following the ratio laid down by the Apex Court in the case of K. M. Pooman & Ors. (Supra), it is held that the insurance company shall satisfy the award. However, the insurance company shall be at liberty to recover the same from the owner, following the principle laid down by the Apex Court in ***National Insurance Company Ltd. Vs. Anjana Shyam & Ors.***, reported in, ***2007 7 SCC 445***.

13. Thus, in view of the forgoing discussion it is directed that the respondent No. 2, the Oriental Insurance Company, shall satisfy the award by depositing the award amount of `3,95,000/- with interest @ 9% from the date of filing of the claim petition, with the tribunal within 02(two) months.

14. It is made clear that the insurance company shall be at liberty to recover the amount from the owner of the vehicle to the extent, of which the insurer is not liable under the policy.

Accordingly, the appeal stands disposed of,

Send back the LCR along with a copy of this judgment and order.

JUDGE

Cha Gang