

**SUPREME COURT OF INDIA**

National Insurance Co. Ltd.

Vs.

Reena Devi & Ors.

C.A.No.1466 - 1500 of 2013

(H.L. Dattu and Dipak Misra, JJ.)

20.02.2013

**ORDER**

**H.L. Dattu, J.**

1. Leave granted.

2. These appeals are directed against the common judgment and order passed by the High Court of Judicature of Himachal Pradesh in FAO(MVA) Nos, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 425, of 2001 and 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154 of 2002 and 453 of 2003, dated 10.9.04. By the impugned judgment and order, the high court has directed the petitioner to pay compensation to the respondents herein who were injured and also to the legal representatives of the deceased passengers.

3. The facts in brief are:- The incident occurred on 18.7.1999 when the bus belonging to Sh.Jai Prakash, the owner of the vehicle, started its journey from Shillai for Bali Koti. En route to Bali Koti, the said bus while negotiating the curve went out of the road and rolled down in the khud. Thereafter, the bus trampled down several persons on the road as well as on the pathway beneath the road thereby taking lives of several persons while others received multiple injuries.

4. We have heard Shri Vishnu Mehra, learned counsel for the Insurance Company and Shri Kartar Singh, learned counsel for the respondent(s).

5. Shri Mehra, learned counsel, would submit that since the bus in question was carrying more passengers than the permitted capacity, the Insurance Company is not liable to pay to the persons who expired in the accident and also to those persons who sustained injuries. In support of that submission, the learned counsel invites our attention to the observations made

by this Court in the case of National Insurance Co. Ltd. Vs. Anjana Shyam & Ors. reported in 2007(7) SCC 445.

6. In reply to the submissions so made by Shri Mehra, the learned counsel appearing for the respondent(s) would bring to our notice, the issues raised by the Motor Accident Claims Tribunal ('the Tribunal' for short) and the conclusions reached thereon in particular, to the fourth issue that was raised and considered by the Tribunal.

7. The Tribunal, while coming to the conclusion that the bus in question was not over-loaded by more than its permitted capacity, has observed at paragraphs 13,14 and 15, as under :

“13. Shri A.S.Shah, Advocate, the learned counsel for the owner and driver of the bus has argued that in all 51 claim petitions have been filed suggesting that the total number of injured and dead persons is not more than 51. He has further argued that the number of injured and the dead persons is also inclusive of the persons, who were not in the vehicle because it is in the reply of the Insurance Co. in para-22 or para-24 of the different petitions that the deceased was not travelling in the ill-fated bus. These averments in the reply suggests that some of the persons suffered injuries because at the relevant time, they were not in the bus. Moreover, as per para No.1 of the reply of the Insurance Co., the information of over-loading was received by th Insurance Co. after going through the newspaper or the inquiry report of the SDM, which are not admissible in evidence. The report of the SDM cannot be treated as reliable evidence as it is based on hearsay evidence and conducted at the back of the petitioners. According to the report, about 18 persons were examined. The Insurance Co. should have examined some of these persons in evidence to prove that actually there was over-loading in the bus.”

14. The petitioners examined many witnesses of whom PW 4 Jeet Singh and PW 5 Hari Singh are the persons who witnessed the accident in question. Their statements do not suggest that there was any over-loading in the bus. The cross-examination of PW 5 Hari Singh made by respondent no.1 and 2 further proves that few persons, who were walking on the road below the road where the bus fell down were also run over by the bus when it fell down. He has denied that more than 100 persons were there in the ill-fated bus.

15. The above discussion of evidence suggests that it cannot be said that at the relevant time there was over-loading in the bus. Moreover only because o over-loading, it cannot be said that there is any breach of conditions of the permit. A reference in this regard may be made to the law laid down by the Hon'ble Supreme Court in case State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V.Operator Sangh, reported in (200-2) 125 Punjab Law Reporter 558, wherein at page 561 in para-8 following proposition of law has been laid down:-

“...But carrying passengers more than the number of specified in the permit will not be a violation of the purpose for which the permit is granted. If the legislature really

wanted to confer power of detention on the police officer for violation of any condition of the permit, then there would not have been the necessity of adding the expression “relating to the route on which or the area in which or the purpose for which the vehicle may be used...”

8. This finding of the Tribunal though raised before the High Court, the High Court, for the reasons best known to it has not answered the same.

9. One thing is certain and clear to us, in view of the finding of fact reached by the Tribunal that the bus in question on the date of the incident was not carrying passengers more than the permitted capacity. It is also the finding of the Tribunal that apart from the persons who were travelling in the bus, the persons walking on the road were also involved in the accident. If that is so, the Tribunal is justified in directing the Insurance Company to compensate all those persons who died in the accident and also those who sustained injuries.

10. In that view of the matter, we sustain the order passed by the Tribunal.

11. At this stage, we make it clear that we do not subscribe to the findings and the conclusions reached by the High Court in the impugned judgment and order. However, the dismissal of the appeals filed by the Insurance Company in the High Court is correct for the reasons aforesaid by us in this order.

12. The Appeals are disposed of accordingly. No order as to costs.

Ordered accordingly.