

*NATIONAL INSURANCE CO. LTD. V. JAGDISH CHANDER, 2023 PLRonline 0127, (2023-4)212  
PLR 347 (J&K)*

## **JAMMU & KASHMIR AND LADAKH HIGH COURT**

*Before: Justice Rajnesh Oswal.*

NATIONAL INSURANCE CO. LTD. V. JAGDISH CHANDER

MA No. 441 of 2014

Reserved on 26.04.2023, Decided on: 09.06.2023

**Motor Vehicles Act, 1988 (59 of 1988), Section 166 - Liability of Insurance Company was restricted to 42 passengers only - 26 passengers died and 54 passengers received injuries - Insurer shall identify those 42 passengers for whom the Insurance Company is liable and identify other claims, for which the Insurance Company has to satisfy and recover from the owner of the vehicle - The 42 highest claims shall be first satisfied by the Insurance Company and rest will be the liability of the owner of the vehicle, which, however, the Insurance Company will pay and it will be entitled to recover the same from the owner of vehicle . [Para 10]**

### **Cases referred:**

**1.** *National Insurance Co. Ltd. v. Anjana Shyam, (2008-1) 149 PLR 179 (SC).*

**2.** *United India Insurance Co. Ltd v. K. M. Poonam, (2011-2)162 PLR 477 (SC).*

*For the Appellant(s)/Petitioner(s): Mr. C. S. Gupta, Adv., For the Respondent(s): Mr. Sudesh Sharma, Adv.*

### **JUDGMENT**

#### **RAJNESH OSWAL, J. -**

**1.** The award dated 22.05.2014 in File No. 89/Claims, titled, "Jagdish Chander vs Kartar Nath and others" passed by the Motor Accidents Claim Tribunal, Udhampur (hereinafter to be referred as the Tribunal), whereby the appellant-Insurance Company has been directed to pay an amount of Rs. 3,32,000/- along with interest at the rate of 6% per annum from the date of institution of the claim petition till its realization to respondent No. 1-Jagdish Chander, has been impugned by the appellant on the ground that that the liability of the Insurance Company was limited to the extent of 42 passengers only, but the learned Tribunal has not considered this aspect of the matter.

2. Mr. C. S. Gupta, learned counsel appearing for the appellant submitted that the liability of the appellant/Insurance company is limited to the extent of 42 passengers only and in order to buttress his claim, he placed reliance on the judgment dated 08.11.2017 titled “National Insurance Co. vs. Shaheena & Ors.” passed by the coordinate bench of this court.

3. On the other hand, Mr. Sudesh Sharma, learned counsel appearing for respondent No. 1 argued that the appellant/Insurance Company cannot wriggle out of its liability by simply raising the plea that their liability to indemnify the owner is limited to the extent of 42 passengers only. He further argued that the impugned award has been passed in accordance with law.

4. Heard and perused the record.

5. The facts are not in dispute, as such, there is no need to mention the details thereof as mentioned in the claim petition by respondent No. 1.

6. The respondent No. 1 had filed a claim petition for grant of compensation on account of injuries suffered to him in an accident that took place on 24.06.2009 due to negligent driving of offending vehicle by its driver. In the said accident, 26 passengers died and 54 passengers received injuries. The learned Tribunal after considering the evidence led by the parties, awarded the compensation for an amount of Rs. 3,32,000/- in favour of respondent No. 1 under following heads:

Loss of future income-	Rs. 2,72,160/-
Pain and suffering-	Rs. 20,000/-
Medical Expenses-	Rs. 20,000/-
Loss of future expectation of life-	Rs. 20,000/-
Total-	Rs. 3,32,160/-
	Rounded to Rs.3,32,000/-

7. The contention of the appellant/Insurance Company is that the liability to satisfy the award by the appellant/Insurance Company was restricted to 42 passengers only and not beyond that. In this context, the judgment of the Hon’ble Apex Court in **National Insurance Co. Ltd. v. Anjana Shyam and others, (2008-1) 149 PLR 179 (SC), 2007 ACJ 2129** is relevant. Paragraph 16 of the said judgment is reproduced 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 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.”

**8.** Further the Apex Court in **United India Insurance Co. Ltd v. K. M. Poonam and others, (2011-2)162 PLR 477 (SC), 2011 ACJ 917** has held as under:

*“26. Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we, in this case, are faced with the same problem as had surfaced in Anjana Shyam’s case (supra). 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 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 we may apply the procedure adopted in Baljit Kaur’s case (supra) 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 persons covered by the Insurance Policy from the owner of the vehicle, as was directed in Baljit Kaur’s case.”*

**9.** Thus, in terms of **Anjana Shyam’s case** (supra), 42 highest claims can be satisfied by the appellant/Insurance Company and rest will be the liability of the owner of the vehicle but at the same time, the appellant has to satisfy the claims and the appellant/Insurance Company can recover the same from the owner as has been held in **K. M. Poonam’s case** (supra). Both these judgments were followed by the coordinate Bench of this court in judgment dated 08.11.2017 in case titled “National Insurance Co. vs. Shaheena & Ors relied upon by Mr. Gupta, the learned counsel for the appellant.

**10.** In view of what has been discussed above, the instant appeal is partly allowed and the

appellant shall identify those 42 passengers for whom the Insurance Company is liable and identify other claims, for which the Insurance Company has to satisfy and recover from the owner of the vehicle. The 42 highest claims shall be first satisfied by the appellant-Insurance Company and rest will be the liability of the owner of the vehicle, which, however, the Insurance Company will pay and it will be entitled to recover the same from the owner of vehicle as per decision in K. M. Poonam's case(supra). The amount deposited before this court be released in favour of the respondent No. 1 after proper identification.

**11.** Disposed of.