

IN THE HIGH COURT OF MEGHALAYA
SHILLONG

1. MAC APP No.1 of 2015

New India Assurance Co. Ltd,
having its Registered and Head Office
At New India Assurance Building,
87 Mahatma Gandhi Road,
Fort Mumbai 400001 and one
of its Divisional Office situated at
opposite Bawri Mansion,
Dhankheti, Shillong – 793001
represented by its Senior
Divisional Manager.

... Appellant

-Versus-

1. Shri Fleming Jeffrey Nongrum,
S/o Smt Tron Nongrum,
R/o Myllem Madan lingsyiem,
East Khasi Hills District,
Meghalaya (Claimant in MAC Case
No.45/2009).

2. Smti Delina Mary Kharhuli,
D/o (L) Herin Kharphuli,
R/o Myllem Madan lingsyiem,
East Khasi Hills District,
Meghalaya (Owner of Indica local
Taxi No. ML 05 E 3178).

3. Shri Ferdinand Kharphuli,
S/o (L) B Kharkongor,
R/o Baniun Myllem,
East Khasi Hills District,
Meghalaya (Driver of Indica local
Taxi No. ML 05 E 3178).

... Respondents

2. MAC APP No.2 of 2015

New India Assurance Co. Ltd,
having its Registered and Head Office
At New India Assurance Building,
87 Mahatma Gandhi Road,
Fort Mumbai 400001 and one
of its Divisional Office situated at
opposite Bawri Mansion,
Dhankheti, Shillong – 793001
represented by its Senior
Divisional Manager.

... Appellant

-Versus-

1. Miss Melaaiahun Kharphuli,
D/o Late Herin Kharphuli,
R/o Myllem Madan lingsyiem,
East Khasi Hills District,
Meghalaya (Claimant in MAC Case
No.46/2009).

2. Smti Delina Mary Kharhuli,
D/o (L) Herin Kharphuli,
R/o Myllem Madan lingsyiem,
East Khasi Hills District,
Meghalaya (Owner of Indica local
Taxi No. ML 05 E 3178).

3. Shri Ferdinand Kharphuli,
S/o (L) B Kharkongor,
R/o Baniun Myllem,
East Khasi Hills District,
Meghalaya (Driver of Indica local
Taxi No. ML 05 E 3178).

... Respondents

3. MAC APP No.3 of 2015

New India Assurance Co. Ltd,
having its Registered and Head Office
At New India Assurance Building,
87 Mahatma Gandhi Road,
Fort Mumbai 400001 and one
of its Divisional Office situated at
opposite Bawri Mansion,
Dhankheti, Shillong – 793001
represented by its Senior
Divisional Manager.

... Appellant

-Versus-

1. Smt. Erila Khyriem,
D/o Late K Khyriem,
Through:
Smt. Aitidahun Khyriem,
D/o Shri K Kharbangar,
R/o Myllem Madan lingsyiem,
East Khasi Hills District,
Meghalaya (Claimant in MAC Case
No.47/2009).

2. Smti Delina Mary Kharhuli,
D/o (L) Herin Kharphuli,
R/o Myllem Madan lingsyiem,
East Khasi Hills District,
Meghalaya (Owner of Indica local
Taxi No. ML 05 E 3178).

3. Shri Ferdinand Kharpuli,
S/o (L) B Kharkongor,
R/o Baniun Myllem,
East Khasi Hills District,
Meghalaya (Driver of Indica local
Taxi No. ML 05 E 3178).

... Respondents

B E F O R E

THE HON'BLE MR JUSTICE SR SEN

For the Appellants : Mr. VK Jindal, Sr. Adv
Mr. S Jindal,
Ms. QB Lamare,
Advocates

For the respondents : Mr. H Nongkhlaw,
Mr. K Sunar,
Ms. A Sinha,
Advocates

Date of hearing : 16.09.2015

Date of Judgment and Order : 16.09.2015

JUDGMENT AND ORDER (ORAL)

MAC Appeal Nos. 1 of 2015, 2 of 2015 and 3 of 2015, arose out of a common judgment dated 06.02.2015 passed by the Motor Accident Claims Tribunal in MAC Case No. 45 of 2009, 46 of 2009 and 47 of 2009.

2. Appellant's case in a nut-shell is that a vehicle bearing registration No. ML-05-E-3178 was insured with them and, as per policy, the seating capacity is only 4 + 1(including the driver), that means, 5 (five) persons altogether, which is also as per the permit enclosed. But, on the day of the accident the car was carrying around 10 persons in a foggy weather, and as a result, the driver lost control of the vehicle and fell into a gorge resulting in the death of four passengers and others sustained injuries. Thereafter, three claimants

namely Shri Fleming Jeffrey Nongrum, Ms. Melaaiahun Kharphuli and Smt Erila Khyriem, filed claim petitions before the Member, Motor Accident Claims Tribunal, and after examining the evidence and other aspects, the Member, Motor Accident Claims Tribunal, delivered a common judgment on 06.02.2015.

3. Learned senior counsel Mr VK Jindal, appeared for and on behalf of the appellant and submits that the multiplier method used in MACT case No.47 of 2009, which came in appeal as MAC APP No.3 of 2015, was wrongly calculated. Learned senior counsel submits that it is an admitted fact that claimant's age at the time of death was 57. If it is so, as per the schedule of the Motor Accident Act, multiplier of 8 maximum applies between the age of 55-60 years and 5 between 60-65 years. Learned senior counsel, also further argues that as per the Motor Vehicle Act, general span of life of a normal person is 65 years. Therefore, he argued that learned Tribunal failed to apply the appropriate multiplier and applied the multiplier of 9 which is not correct. Learned senior counsel also further submitted that in the other two cases, he has no dispute with the multiplier method but the question remains that the Court did not take the principle of contributory negligence as the claimants should not have boarded an overcrowded taxi. The moment they have taken the risk by themselves by boarding an overcrowded taxi, they are liable for contributory negligence for which they are also liable to a certain extent.

4. On the other hand, Mr H Nongkhaw, learned counsel appearing for and on behalf of the claimants submitted that only three claimants approached for compensation, the rest have not approached the Motor Accident Claims Tribunal for compensation, so it is not difficult for the Insurance Company to give compensation only for three claimants since the capacity was five in total.

5. On the other hand, Mr K Sunar, learned counsel appearing for and on behalf of the Owner and Driver of the vehicle submits that if other claimants except the three claimants approach before the Tribunal, he is ready to compensate them.

6. After hearing the submissions advanced by the learned counsel for the parties, I fully agree with the submission of Mr VK Jindal, learned senior counsel for the appellant that multiplier matter applied in MAC Case No. 47 of 2009, which has been registered here as MAC APP No. 3 of 2015, has been applied wrongly. It cannot be 9 it should be 8 and 5 respectively. Therefore, Member, Motor Accident Claims Tribunal, is hereby directed to re-look into the matter and to apply the multiplier method as per the schedule of the Motor Vehicle Act, 1988, where it is specifically mentioned that age group between 55-60 years is 8 and 60-65 years is 5. Since the age of the deceased was 57 years and life span of a person as per the Act is 65 years, the multiplier method of 8 and 5 respectively will apply.

7. In the other two cases, after scrutiny, I find that the car is perfectly normal and accident occurred due to fog and overcrowding of the vehicle. It is a simple logic that if the capacity of a car is 5 altogether, 10 persons cannot be accommodated including the driver. So it is definitely contribution of negligence. However, those ill-fated passengers might be ignorant about the law but ignorance of law is not an excuse. Therefore, Member, Motor Accident Claims Tribunal, is hereby directed to deduct 2% from the amount awarded for their contributory negligence, so that in future it will remain as a precedent. Besides that, Member, Motor Accident Claims Tribunal, may allow the Insurance Company appellant, to recover the amount paid to the claimants from the owner and driver of the vehicle if law and rules permits.

8. Accordingly, impugned common judgment dated 06.02.2015 is hereby set aside.

9. Registry is directed to send the Lower Court record along with copy of this order immediately and Member, Motor Accident Claims Tribunal, is directed to dispose of the matter within two months from the date of receipt of the copy of this order.

10. It is also mentioned here that the amount already deposited by the appellant with the Registry of this Court and paid to the claimant shall be adjusted at the time of final payment.

11. By this common judgment and order MAC Appeals No. 1, 2 and 3 of 2015 stands disposed of.

JUDGE

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