# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Miscellaneous Appeal No.817 of 2019**

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1. The Oriental Insurance Co. Ltd. Jamui, through its Branch Manager, The Oriental Insurance Co Ltd. Bypass Road, Near Registry Office, Mahisour, Jamui, P.O. and P.S. Distt-Jamui. through Sri Niraj Kumar Deputy Manager The Oriental Insurance Company Ltd. Regional Office Pirmohani Kadamkuan, Patna.
2. The Oriental Insurance Co. Ltd., Munger through its Branch Manager Oriental Insurance Company Ltd. Rajwati, Post Office Road, Munger, P.O. and P.S. Munger Distt.-Munger. through Sri Niraj Kumar Deputy Manager The Oriental Insurance Company Ltd. Regional Office Pirmohani Kadamkuan, Patna.
3. The Oriental Insurance Co. Ltd. Bhagalpur, through its Divisional Manager, The Oriental Insurance Co. Ltd. Near Railway Gumti No. 3 Bhikhanpur, Bhagalpur, P.S. Ishaqechak, P.O. and Distt.-Bhagalpur, through Sri Niraj Kumar Deputy Manager The Oriental Insurance Company Ltd. Regional Office Pirmohani Kadamkuan, Patna.

... ... Appellant/s

Versus

1. Nitu Singh, Wife of Late Anshu Kumar, Resident of Vill-Dihari, P.S. Sono, Distt.-Jamui.
2. Sunita Singh, W/o Late Chandrashekhar Singh, Resident of Vill-Dihari, P.S. Sono, Distt.-Jamui.
3. Vidhi Singh (Minor), D/o Late Anshu Singh minor under the guardianship of their mother Respondent No. 1. Resident of Vill-Dihari, P.S. Sono, Distt.-Jamui.
4. Abhira Singh (Minor), S/o Late Anshu Singh, minor under the guardianship of their mother Respondent No. 1. Resident of Vill-Dihari, P.S. Sono, Distt.-Jamui. (Respondent Nos. 3 & 4, both under the guardianship of their mother respondent no.1)
5. Sumit Kumar Singh, Son of Late Tripurari Singh, Resident of P.O. and P.S.-Malaypur, Distt.-Jamui.
6. Ashok Kumar Singh, son of Makun Singh, R/o Katauna, P.S. Barahat, Distt.-Jamui.

... ... Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr. Sanjay Sinha, Advocate. |
| For the Respondent/s | : | Mr. Shailash Anand, Advocate. |
| | | Mrs. Neha Gautam, Adovcate. |
| | | Mr. Sukesh Ranjan, Advocate. |
| | | Mr. Dipak Kumar, Advocate. |

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**
**C.A.V. JUDGMENT**

**Date : 18-10-2024**

Heard learned counsel for appellants and learned counsel for the respondents.

**2.** This appeal has been filed by the Oriental Insurance Company Ltd. (hereinafter referred to as 'insurance company') under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') against the judgment dated 12.03.2019 and award dated 14.10.2019 passed by learned Additional District Judge-IV-cum Motor Accident Claims Tribunal, Jamui (hereinafter referred to as 'learned Tribunal') in Claim Case No.51 of 2016 whereby the learned Tribunal directed the appellant/ Insurance Company to pay Rs.34,29,268/- with interest @ 6 % *per annum* from the date of filing of the claim petition i.e. 20.09.2016 till its realization. If not paid to the claimants within 90 days from the date of judgment, the insurance company shall be liable to pay the compensation amount with interest @9% *per annum* from the date of filing of the claim petition till its realization. The liberty has been granted to the appellants/Insurance Company to recover the paid compensation amount, according to law, from the owner of the vehicle if it is found that owner has violated any of the terms or conditions.

**3.** The facts, in brief, are that Anshu Kumar aged about 25 years, was a Railway Employee who on 07.06.2014 was traveling to Deoghar on a TATA Sumo Victa bearing Registration no. BR-46A-3767, met with an accident near Rajdhani Hotel in Chandramandi. The aforementioned accidental vehicle being driven rashly and negligently by its driver Ashok Kumar Singh (O.P. no.2/ respondent no.6) collided with a tree due to which the deceased Anshu Kumar sustained grievous injury to which he succumbed and died. With respect to the said incident Chandramandi P.S. Case No. 33 of 2014, was registered on 07.06.2014. The said accidental vehicle was insured with appellants/ Insurance Company on the date of incident from whom the claimants, who are legal representative of the deceased being wife, mother and minor children of deceased and being dependent upon the income of deceased, are entitled for compensation.

**4.** Claimant/respondent no.1 is wife of the deceased, Claimant/respondent no.2 is the mother of the deceased and Claimant/respondent nos.3&4 are minor daughter and son of the deceased. The deceased was a Railway employee and his monthly salary was Rs.15,683/-.

**5.** The owner and driver of the said accidental vehicle (O.P. nos.1 & 2/respondent nos.5 & 6) appeared and filed written statement and denied the claim of the claimants. It was stated therein that the driver of the accidental vehicle was not driving rashly and negligently and the accident caused due to unforeseen passing of a cow in the middle of the road.

**6.** The appellants/Insurance Company (O.P. nos. 3 to 5) appeared and filed separate written statement and stated that the claim made by the claimants is not maintainable. It was stated that the owner of the accidental vehicle has violated the insurance conditions as enshrined under the Act. However, it was admitted that the accidental vehicle was covered under valid policy bearing Insurance Policy no.342490/31/2014, at the material time of accident.

**7.** On the basis of pleading and submissions advanced on behalf of the parties, the learned Tribunal framed the following issues:-

> *(i) Whether the claim case filed by the claimants is maintainable?*
> *(ii) Whether deceased Anshu Kumar died due to rash and negligent driving by the driver of Tata Sumo Victa BR-46A-3767 on 07.06.2014?*
> *(iii) Was the license of the driver of vehicle no. BR-46A-3767 valid on the date of incident i.e., 07.06.2014?*
> *(iv) Was the vehicle no. BR-46A-3767*

*insured with Oriental Insurance Company on 07.06.2014?*
*(v) Whether the monthly income of deceased Anshu Kumar was Rs. 15,683/- per month?*
*(vi) Whether the claimants are entitled to get compensation on account of death of deceased Anshu Kumar, if yes then to whom and how much?*
*(vii) Whether the claimants are entitled to any other relief or reliefs?*

**8.** The claimants in support of their claim examined four witnesses i.e., CW-1 Sunita Singh, CW-2 Vipul Kumar, CW-3 Amitabh Kumar, and CW-4 Nitu Singh and also filed documents (Exhibit 1 to 13) i.e., certified copy of F.I.R. of Chandramandi P.S. Case no. 33 of 2014 (Ext.1), certified copy of Ordersheet of Chandramandi P.S. Case no. 33 of 2014 (Ext.2), certified copy of chargesheet of Chandramandi P.S. Case no. 33 of 2014 (Ext.3), photocopy of Owner Book of the accidental vehicle bearing Registration no. BR-46A-3767 (Ext.4), photocopy of Insurance Policy of the accidental vehicle (Ext.5), photocopy of driving license of driver of the accidental vehicle (Ext.6), photocopy of M.V.I. Report (Ext.7), photocopy of identity card of Railway of the deceased (Ext.8), photocopy of PAN Card of the deceased (Ext.9), photocopy of free pass of Railway of the deceased (Ext.10), photocopy of Payment Slip of the deceased (Ext.11), photocopy of Matric Certificate of the deceased (Ext.12) and photocopy of *post-mortem* report of the deceased (Ext.13). As it appears from Ext.5 (Insurance Certificate) that it was private car liability policy of the accidental vehicle and the premium was paid for third party cover; personal accident (P.A.) for owner-driver; and legal liability (L.L.) for paid driver, conductor and cleaner.

**9.** Neither oral nor documentary evidence was adduced on behalf of the opposite parties including the appellants/Insurance Company to controvert the claim of claimants.

**10.** After hearing the parties and after gone through the material on record, *vide* the impugned judgment dated 12.03.2019, the learned Tribunal held that accident of TATA Sumo Victa happened due to rash and negligent driving of its driver Ashok Kumar Singh, who had valid driving licence on the date of accident. The deceased Anshu Kumar was neither owner nor driver and he comes under the category of third party and the claimants are entitled to get compensation under Section 166 of the Act. The Vehicle in question was duly insured with Oriental Insurance Company Ltd. The deceased was working in Railway having monthly salary of Rs. 15, 683/-. The claimants are entitled to get compensation under various heads, which is stated herein below:-

| S.No. | Heads | Amount |
|---|---|---|
| 1. | Monthly Income | Rs.15,683/- |
| 2. | On addition of 40% Future prospects | Rs.21,956/- |
| 3. | Annual Income | Rs.2,63,472/- |
| 4. | Annual income after 1/4th deduction towards personal and living expenses. | Rs.1,97,604/- |
| 5. | Multiplier | 17 |
| 6. | Loss of dependency | Rs.33,59,268/- |
| 7. | Loss of Estate, Funeral expenses and loss of consortium | Rs.70,000/- |
| 8. | **Total compensation** | **Rs.34,29,268/-** |

**11.** Learned counsel for the appellants/ Insurance Company has submitted that the findings recorded by the learned tribunal holding the Insurance Company liable to pay compensation amount is erroneous and cannot stand the test of judicial scrutiny. To bring home his contention, it is argued that the learned Tribunal failed to consider that the deceased was not a third party rather a borrower of the vehicle from his brother-in-law and was traveling in the accidental vehicle thus he stepped into shoe of owner of vehicle. He further submitted that the learned Tribunal has erred by not appreciating the provision embodied under Section 147 of the Act which does not require an Insurance Company to assume risk for death or bodily injury to the owner/borrower of the vehicle. The premium paid for the personal Accident cover of the owner/driver and the case cannot be decided as a case of third party, taking the liability of appellant as unlimited. Furthermore, it has been submitted that an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. The vehicle in question was a private vehicle owned by a relative of the deceased and it did not cover the traveler of vehicle.

**12.** The learned counsel for appellant relied on following judgments of Hon'ble Supreme Court in case of **Ningamma & Anr v. United India Insurance Co.Ltd** reported in **AIR 2009 SC 3056; 2009 (13) SCC 710**, **Oriental Insurance Co. Ltd. v. Jhuma Saha**, reported in **(2007) 9 SCC 263; AIR 2007 SC 1054, New India Assurance Co. Ltd v. Sadanand Mukhi & Ors** reported in **2009 (2) SCC 417** in support of his submission that in such cases deceased enters into the shoes of the owner of the vehicle and hence, his dependents cannot claim compensation under section 163 A or under Section 166 of the Act, rather they would be entitled to compensation to the extent of premium paid for personal accident.

**13.** Learned counsel for the appellants next submitted that the learned Tribunal erred in directing the penal interest to be paid by the appellant which is not in accordance with law.

**14.** *Per contra*, learned counsel for claimants has submitted that the learned Tribunal has rightly awarded the compensation which requires no interference by this Court. The claimants have duly proved their case. It is further submitted that the deceased was merely an occupant of the said vehicle and as such was not in direct control of the vehicle which makes him a tortfeasor or contributor to the accident, and hence it would be correct to say that the deceased was a third party as he was not a registered owner of the vehicle as well as he was not in the representative capacity of the owner or in control of the vehicle as the vehicle was being driven by a driver who was employed by the registered owner of the vehicle. As no error arises in the finding of the learned Tribunal, this appeal has no merit and is liable to be dismissed.

**15.** He has submitted that the facts of this case is different than the cases relied upon by the appellants where the owners/deceased were driving the vehicle themselves and as such they were in immediate control of the vehicle, whereas in the present case the deceased was not driving the vehicle but he was occupant and the vehicle was driven by driver/respondent

No.6 and the deceased was not in any sort of control of the vehicle in question, as such, the deceased will not step in the shoes of the owner of the vehicle. The facts of cases of Ningamma (***supra***) and Sadanand Mukhi (***supra***) are not relevant for the present case.

**16.** He has further submitted that police after investigation filed the charge sheet under Section 279 and 304A of IPC against the driver of the Vehicle. The said vehicle was duly insured with the Insurance Company who is liable to make the payment of compensation awarded in favour of claimants.

**17.** There is no dispute in this appeal with respect to the fact of accident in which the deceased died and the quantum of compensation awarded to the claimants. The argument of the learned counsel for appellants is that the deceased was not a third party in the facts and circumstances of the case and accordingly, the insurance company is not liable. The learned counsel for the claimants has argued that the deceased was a third party accordingly, the claimants are entitled to compensation from the insurance company. The only question for consideration in this appeal is "whether the insurance company is liable to pay compensation to the claimants treating the deceased as third party who was traveling in the private vehicle of his brother-in-law, which met with accident due to rash and negligent driving of the driver of the accidental vehicle?

**18.** When an application of demand of compensation could have been made by the legal representatives of the deceased as provided under Section 166 of the Act, the learned Tribunal is required to hold an enquiry into the claim and then proceed to make award which, however, would be subject to provisions of Section 162 of the Act, by determining the amount of compensation, which is found to be just. The claimants have to prove that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make payment to the heirs.

**19.** In the case of **Ningamma & Anr. v. United India Insurance Co. Ltd.** (*supra*), the deceased was driving a motor-cycle which was borrowed form its real owner and met with an accident by dashing bullock cart i.e., without involvement of any other vehicle. It was held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163 A of the Act cannot apply wherein the owner of vehicle himself is involved.

**20.** In case of **New India Assurance Company Ltd. v. Sadand Mukhi and Others** *(supra)*, wherein, the son of the owner was driving the vehicle, who died in the accident, was not regarded as third party. In that case the Hon'ble Supreme Court held that neither Section 163-A nor Section 166 of the Act would be applicable.

**21.** In case of **Oriental Insurance Company Ltd. v. Rajni Devi and Others (2008) 5 SCC 736** it has been categorically held that in a case where third party is involved, the liability of the Insurance Company would be unlimited. However, where compensation is claimed for the death of owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the Insurance Company would depend upon the terms thereof.

**22.** The Hon'ble Supreme Court *vide* Judgment dated 03.09.2024 in case of **Vaibhav Jain v. Hindustan Motors Pvt. Ltd.** reported in **2024 SCC OnLine SC 2337** with respect to role of possession or control of a vehicle observed as under:

> ***"15.** An application for payment of compensation is filed before the Tribunal*

*constituted under Section 165 of the Act for adjudicating upon the claim for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Use of the motor vehicle is a sine qua non for entertaining a claim for compensation. Ordinarily if driver of the vehicle would use the same, he remains in possession or control thereof. Owner of the vehicle, although may not have anything to do with the use of vehicle at the time of the accident, actually he may be held to be constructively liable as the employer of the driver. What is, therefore, essential for passing an award is to find out the liabilities of the persons who are involved in the use of the vehicle or the persons who are vicariously liable. The insurance company becomes a necessary party to such claims as in the event the owner of the vehicle is found to be liable, it would have to reimburse the owner in as much as a vehicle is compulsorily insurable so far as the third party is concerned, as contemplated under section 147 thereof. Therefore, there cannot be any doubt whatsoever that the possession or control of a vehicle plays a vital role."*

***(Emphasis supplied)***

**23.** It is further observed in the **Vaibhav Jain v. Hindustan Motors Pvt. Ltd.** *(supra)* that 'owner' of a vehicle is not limited to the categories specified in Section 2(30) of the Act. If the context so requires, even a person at whose command or control the vehicle is, could be treated as its owner for the purpose of fixing tortuous liability for payment of compensation. In the said case, it was considered whether at the time of accident the vehicle in question was under the command and control of appellant, Vibhav Motors (the dealer). At the time of accident two employees of M/s Hindustan Motors, namely, the deceased and the driver of Lancer car were present during test drive as representative of the owner of the vehicle and the Hon'ble Supreme Court held that at the time of accident the vehicle was not only under the ownership of M/s Hindustan Motors but also under its control and command through its employees and being just a dealer of Hindustan Motors, the appellant (the dealer) being in constructive possession of the vehicle as dealer, was not liable for compensation as an owner of the vehicle. The Hon'ble Supreme Court concluded that Vaibhav Jain (the dealer) was neither owner nor in control/command of the vehicle at the time of accident, and the vehicle was being driven by employee of M/s Hindustan Motors, accordingly, apart from the driver, M/s Hindustan Motors alone was liable for the compensation awarded.

**24.** The law is well settled that if it is proved that the deceased is the owner of the motor vehicle in question in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him.

Accordingly, the legal representatives of the deceased who have stepped into the shoe of the owner of the motor vehicle could not claimed compensation under Section 166 of the Act.

**25.** Section 147 of the Act elucidates the requirement of policies and limits of liability. The Policy of insurance emanates form a contract of indemnity between the insurer and the insured. The insurer is the first party and the insured is the second party. Other than the contracting parties to the insurance policy and could be a person on the road, an occupant of an another vehicle or an occupant of the vehicle in question of the insurance policy. Gratuitous passenger is the passenger traveling without payment of consideration.

**26.** In the present case admittedly the deceased was traveling on TATA Sumo Victa and was not driving the said vehicle and the said vehicle was driven by driver/respondent No. 6, against whom the FIR was lodged under Section 279 and 304 A of IPC and the police after investigation also filed Charge sheet against the driver of the said vehicle under the said sections.

**27.** The deceased was admittedly neither insurer nor insured also cannot be termed as gratuitous passenger as he was relative of owner resultantly, he was covered by the ambit of third party. The deceased was neither owner nor driver and had no control upon the said vehicle or its driver in any manner. It appears for the record that due to rash and negligent driving of the vehicle, the accident took place in which the deceased had sustained grievous injury and died due to that reason. It is not correct to say that the deceased had stepped into the shoes of the owner of the vehicle in question as the same belongs to his relative. The deceased was neither first party nor second party but is a third party in the accident caused by the driver of the motor vehicle. The third party itself has particular technical connotation in the field of insurance. The first party is the insured and the second party is the insurer. The third party is a person, who is not the insurer or the insured. Accordingly, the claimants who are the wife, mother and minor children of the deceased are entitled to claim the compensation under Section 166 of the Act and the instant appeal having no merit is liable to be dismissed.

**28.** The Hon'ble Supreme Court has settled the issue with respect to the penal interest imposed by the Tribunal in case of **National Insurance Company Ltd. v. Keshav Bahadur & Ors** reported in **(2004) 2 SCC 370**. However, the insurer cannot withhold the award amount indefinitely. Grant of interest is discretionary according to known rules of law and in the interest of justice and it cannot be arbitrary. The purpose of award of interest is to put pressure on the relevant person not to delay in making the payment; and to compensate the victim or his dependents at least to some extent for such delay as may occur, by way of interest. Section 171 of the Act confers a discretion on the Tribunal to award interest. The imposition of penalty by enhancement of interest is not statutorily envisaged and prescribed. In **Keshav Bahadur** *(supra)* it has been held that once the discretion has been exercised by the learned Tribunal to award simple interest on amount of compensation to be awarded at a particular rate and from a particular date there is no scope for retrospective enhancement for default in payment of compensation. Accordingly, the imposition of penalty by enhancement of rate of interest from 6% to 9% *per annum* is **set aside**.

**29.** The Judgment dated 12.03.2019 and Award dated 14.10.2019 passed by learned Tribunal in Claim Case No.51 of 2016 stands modified with respect to change in the rate of interest in default of payment within stipulated period. Accordingly, this instant Misc. Appeal in **disposed off** with the aforesaid modification in the impugned Judgment and award.

The rest of the impugned Judgment/Order passed by the learned Tribunal is confirmed and remain unaltered.

**30.** The appellant-Oriental Insurance Company Ltd. is directed to deposit the aforesaid amount with interest, less any amount already deposited, before the learned Tribunal, within a period of six weeks form the date of this Judgment/order.

**31**. There shall be no order as to costs.

**32.** Pending application(s), if any, stand disposed off.

**33.** Let the Trial Court Record of this case be returned back forthwith to the concerned Court/Tribunal.

**34.** The statutory amount deposited by appellants/Insurance Company at the time of preferring the appeal shall be remitted to the learned tribunal within a period of six weeks from today for adjustment of award to be indemnified by the Insurance Company to the claimants.

**(Sunil Dutta Mishra, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | 07.10.2024 |
| **Uploading Date** | 18.10.2024 |
| **Transmission Date** | NA |