

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.386 of 2017

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The Branch Manager, United India Insurance Company Ltd. Chapra through the
Chief Regional Manager, United India Insurance Co.Ltd., Regional Office, Chanakya
Commercial Complex (3rd Floor) R-Block, Patna-1 Appellant

Versus

1. Most. Malti Devi wife of Late Raj Kishore Prasad
2. Lallu Prasad son of Late Raj Kishore Prasad
3. Pooja Kumari D/O Late Raj Kishore Prasad
4. Ganesh Prasad son of Late Raj Kishore Prasad
5. Chhotu Kumar son of Late Raj Kishore Prasad

Both 4 and 5 are minor and represented through their natural guardian Mother Most.
Malti Devi.

All Resident of village-Nakata Diyara, P.O.- Dighaghat, P.S.-Digha, Dist-Patna,
presently residing at Mohalla- Haripur Colony, Digha, P.S-Digha, P.O-Dighaghat,
Dist-Patna Respondents

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Appearance :

For the Appellant/s	:	Mr. R.K. Bikram, Advocate
For the Respondent nos. 1-5	:	Mr. Mukesh Prasad Singh, Advocate
For the Respondent no. 6	:	Mr. D.K. Sinha, Senior Advocate
	:	Mr. Alexander Ashok, Advocate
For the Respondent no.7	:	Mrs. Renu Jha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 04-04-2025

Heard the learned counsels for the appellant as

well as the learned counsels for the respondents.

2. This Miscellaneous Appeal has been filed

under Section 173 of the Motor Vehicles Act, 1988 (hereinafter
referred to as “Act”) on behalf of United India Assurance
Company Ltd., (hereinafter referred to as “Insurance
Company”) against the Judgment dated 14.12.2015 and Award
dated 06.01.2016 passed by learned Additional District Judge
1st-cum-Motor Vehicle Accident Claims Tribunal, Saran,
Chapra (hereinafter referred to as “learned Tribunal”) in Claim
Case No. 56 of 2006 where by the claim of the Respondent No.
1 has been allowed and the Appellant- Insurance Company has
been direct to pay compensation of Rs. 9,20,660/- with interest



@ 6% per annum from the date of filing of claim case till the date of payment. However the appellant has been granted to release the amount from the owner of the vehicle, if it is found that there is violation of policy condition.

3. The brief facts of the claim case is that on 14.03.2006 deceased Raj Kishore Prasad aged about 38 years met with a fatal accident on 14.03.2006 at 9 PM while the deceased Raj Kishore Prasad was coming to Chapra with Narendra Prasad on a jeep and when they reached around 3 km away from Dighwara towards Chapra at village Jhawa on N.H. 19, the jeep on which the deceased Raj Kishore Prasad was traveling met with an accident causing the death of Raj Kishore Prasad who is the husband of applicant Malti Devi in the instant case. He was rushed to PMCH where he was declared dead by the doctor. The vehicle in which deceased Raj Kishore Prasad was traveling was registered bearing registration No. BR-1P-9438.

4. The claimant has four children. The applicant and her children were totally dependent upon the deceased Raj Kishore Prasad who was an employee of Electricity Board and was earning monthly income of Rs. 15,000/- out of which the deceased used Rs. 10,000/- to give Respondent No.1 /claimant



for maintenance and education of their children. It is also claimed that due to the fatal accident of her husband she has suffered pecuniary loss and her children are facing a financial crisis. The claimant stated that she is also suffering from mental agony and loss of consortium and it was expected that her deceased husband's monthly income would have been increased up to a high pay-scale. Hence she claimed an amount of Rs. 22,00,000/- (Twenty two lakh rupees only/-) as compensation for the death of her husband. After filing of the claim case, notices were issued to the Opposite parties i.e. the owner of the vehicle and Insurance Company United India Insurance Company, through its branch Manager.

5. O.P. No. 1 & 2 being the owner of the offending vehicle appeared and filed Insurance certificate bearing policy No. of the vehicle in question which was 210901/31/05/01119. The policy was valid from 19.10.2003 to 16.10.2006 and the date of occurrence of the accident 24.03.2006 which meant that the vehicle was covered under insurance. As such, the owner was exempted from the liabilities of payment|of compensation as the vehicle in question was covered under insurance.

6. The appellant/ O.P. No. 3 United India



Insurance Company filed their written statement on 27.05.2010 alleging therein that they were exempted from the liability as there was violation of the policy condition and the vehicle in question was not validly insured. Hence O.P. No.1 and 2 were liable for payment of compensation.

7. On the basis of the pleadings of the parties the trial court framed the following issues:-

- i. Is the claim petition as filed and framed maintainable?*
- ii. Whether the deceased died in motor vehicle accident due to rash and negligent driving of the driver of the offending vehicle no. BR-1P-9438?*
- iii. Whether the claimants are entitled to get compensation for the death of deceased Raj Kishore Prasad? If so from whom and to what extent?*
- iv. What other relief or reliefs the petitioners are entitled to?*

8. To substantiate her case the claimant examined oral witnesses and produced documentary evidence. The witnesses examined on behalf of the claimant/respondent are- CW-1 Ram Daran Rai, CW-2 Most. Malti Devi w/o deceased Raj Kishore Prasad. In addition to this documentary evidence were produced as Ext.1 certified copy of F.I.R. lodged against the driver of the offending vehicle. Ext.2 is pay slip issued by department of deceased Raj Kishore Prasad, Ext. 3 is



Postmortem report of deceased and Ext.4 is photocopy of Policy paper.

9. After hearing the parties and going through the material on record, the learned Tribunal held that the deceased died due to accident caused by rash and negligent driving of the driver as was shown in the charge-sheet filed by the police, who was holding valid driving license on the date of accident, of the aforesaid accidental vehicle. The tribunal held that the claim of the claimant was maintainable as the cause of death of the deceased was shown to have been caused by the rash and negligent driving of the offending vehicle. The vehicle in question was duly insured with the appellant/Insurance Company on the material date of the accident. The Tribunal also noted that the deceased was the sole earning member of his family and he was likely to get a higher salary after promotion.

10. Thus, the Insurance Company was made accountable to pay the compensation amount to the claimants under the following heads:

S. No.	Head	Calculation	Compensation
1.	Monthly salary of the deceased	-	Rs. 6979/-
2.	Future Prospects	Addition of 30% of income of	Rs. 8943/-



		deceased = Rs.6979 + Rs.2064/-	
3.	Annual Income of deceased	Rs. 8943 X 12	Rs.1,07,316/-
4.	1/3rd deduction towards personal and living expenses	Rs. 1,07,316 -Rs. 35,772	Rs. 61,944/-
5.	Multiplier	15 (since age of deceased was between 41-45 years)	15 X Rs. 61,944= Rs. 9,19,160/-
6.	Loss of dependency		Rs. 5000/-
7.	Funeral expenses		Rs. 5000/-
8.	Loss of estate		Rs. 5000/-
9.	Total Compensation payable		Rs.9,20,660/-

11. The appellants being not satisfied and aggrieved by the impugned judgment and award, filed the present appeal for setting aside the impugned Judgment dated 14.12.2015 and Award dated 06.01.2016 passed by the learned Tribunal.

12. Learned counsel for the appellant/Insurance Company has submitted that the learned Tribunal erred while passing the impugned judgment as there was violation of the policy conditions by the deceased and that the deceased died due to his own carelessness. Learned counsel submitted that for



the alleged accident an F.I.R. was lodged on the *fardbeyan* of one of the injured Narendra Prasad bearing P.S. Case No. 28 of 2006 and from his *fardbeyan* it appeared that the driver of the jeep was not at fault for the alleged accident nor was he negligent in any manner, rather the accident took place due to the rash and negligent act of the driver of the Truck and this fact has been supported in the final report of the police. The counsel relied ***National Insurance Company Limited v. Pushpa Rana*** decided into 2009 by Hon'ble Apex Court to submit that the finding of the Learned Tribunal cannot be sustained. He further submitted that the Learned Tribunal further failed to consider that granting liberty of recovery to the Insurance company in case of breach of policy conditions has been held to be bad and illegal in various judgment of the Hon'ble Apex court as well as under Article 142 of the Constitution of India. He further submitted that the finding of the Learned Tribunal suffers from non-application of mind and is beyond the materials on record. He further submitted that the finding of the Learned Tribunal that the death of the deceased was caused due to rash and negligent driving of the driver of the jeep is contrary to the F.I.R. and police report (Ext. 1 and 2 respectively). He further submitted that the Learned Tribunal failed to consider that the



factum of death by Motor accident has not been proved by cogent evidence. He further submitted that the Ld. Tribunal failed to consider and appreciate that the owner of the vehicle has not complied Section 134 (c) of the Motor Vehicle Act as he did not provide information regarding accident to the appellant and the police has also not complied with the provisions of Section 158(6) of the Motor Vehicle Act and as such the appellant cannot be liable to pay compensation. The learned counsel further submitted that the driving license and route permit of the alleged vehicles have not been proved, which is fatal to the case. He further submitted that the amount of compensation is excessive as it is the case of contributory negligence.

13. Learned counsel for the respondent on the other hand submitted that the driver of the jeep was not vigilant in driving and he was also responsible for the accident. He relied on the decision of the Apex Court in ***Kaushnuma Begum v. New India Assurance Co. Ltd., (2001) 2 SCC 9*** wherein it was held:

“11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect



of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident?

This question depends upon how far the rule in Rylands v. Fletcher' can apply in motor accident cases. The said rule is summarised by Blackburn, J., thus:

"The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

13. The House of Lords considered it and upheld the ratio with the following dictum:

"We think that the true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or,



perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

18. In **Gujarat SRTC v. Ramanbhai Prabhatbhai**, (1987) 3 SCC 234 the question considered was regarding the application of the rule in cases arising out of motor accidents. The observation made by E.S. Venkataramiah, J. (as he then was) can profitably be extracted here:

"Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher'. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the



liability for damages arising out of motor vehicles accidents as a liability without fault."

19. Like any other common law principle, which is acceptable to our jurisprudence, the rule in Rylands v. Fletcher' can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the rule in claims for compensation made in respect of motor accidents".

14. The counsel further submitted that the ground raised by the appellant that it was a case of contributory negligence and that the Insurance company was not solely responsible does not hold ground in the eye of law. For this he relied on the case of ***Khenyei v. New India Assurance Co. Ltd., Civil Appeal No. 4244 of 2015*** where it was held that:

"It is a case of composite negligence where injuries have been caused to the claimants by combined wrongful act of joint tortfeasors. In a case of accident caused by negligence of joint tortfeasors, all the persons who aid or counsel or direct or join in committal of a wrongful act, are liable. In such case, the liability is always joint and several. The extent of negligence of joint tortfeasors in such a case is immaterial for satisfaction of the claim of the plaintiff/claimant and need not be determined by the court. However, in case all the joint tortfeasors are before the court, it may determine the extent of their



liability for the purpose of adjusting inter-se equities between them at appropriate stage. The liability of each and every joint tortfeasor vis a vis to plaintiff/claimant cannot be bifurcated as it is joint and several liability. In the case of composite negligence, apportionment of compensation between tortfeasors for making payment to the plaintiff is not permissible as the plaintiff/claimant has the right to recover the entire amount from the easiest targets/solvent defendant.

What emerges from the aforesaid discussion is as follows :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their interse liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the



court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

15. The counsel further relied on the decision of the Apex Court in ***IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi & Ors., SLP (C) No. 19902 of 2023*** to submit that the ground raised by the appellant that there was a breach of policy condition and hence the Insurance company was exempted from paying compensation is not correct as the Insurance Company was not able to fully prove that there was some violation of the law. In the above stated case, the Apex Court observed as follows:

Thereafter, in National Insurance Co. Ltd. vs. Swaran Singh and others (2004) 3 SCC 297, a 3-Judge Bench of this Court dealt with the interpretation of Section 149 of the Act of 1988. The cases before the Bench involved, amongst others, instances where the driving licence produced by the driver or owner of the vehicle was a fake one. The Bench noted that Section 149(2)(a) opened with the words:



'that there has been a breach of a specified condition of the policy', which would imply that the insurer's defence of the action would depend upon the terms of the policy. It was observed that an insurance company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149 (2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provisions. The Bench went on to state that where the insurer, relying upon the violation of law by the assured, takes exception to pay the assured or a third party, it must prove a willful violation of the law by the assured. Noting that the proposition of law is no longer res integra that the person who alleges breach must prove the same, the Bench observed that an insurance company would be required to establish the said breach by cogent evidence and in the event an insurance company fails to prove that there has been breach of the conditions of the policy on the part of the insured, such an insurance company cannot be absolved of its liability.'

16. Having perused the memorandum of appeal and the materials available on record and the oral submission of the appellant it is clear that the appellant has not raised any contention with respect to quantum of compensation. The main point for determination for this Court are as follows:



i. Whether the judgement and award passed by the Learned Tribunal is correct in holding that the Appellant Insurance Company is liable to pay compensation to the claimants?

17. In *National Insurance Co. Ltd. v. Swaran Singh and Ors.(supra)*, a three Judge Bench of the Hon'ble Supreme Court dealt with the interpretation of Section 149 of the Act. It was observed that an Insurance Company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149(2)(a) and (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provision. It must prove a willful violation of the law by insured. It is further observed that the proposition of law is no longer *res integra* that the person who alleges breach must prove the same, the insurance breach by cogent evidence.

18. It is observed that from the material available on record it becomes clear that the driver of the offending vehicle, i.e. the jeep in which the deceased was traveling was not vigilant and there was negligence on his part. The Appellant has not been able to establish with cogent evidence that there was a breach of any of the policy conditions. The appellant's



submission that the jeep was standing is not substantiated by the material available on record. As such the claimant/respondent is entitled to the compensation as awarded by the Learned Tribunal. The driver is not found to have been vigilant in driving and hence he is also at fault.

19. On the other hand it is observed that in light of the decision of the Apex Court in *Khenyei case (supra)* even in the case of composite negligence, the claimant can recover at his option whole damages from any one of tort-feasors. In the instant case, the claimants sought to recover the damages from the offending vehicle which was insured with the Appellant instead of the unknown truck. The claimants were rightly entitled to compensation from the Appellant.

20. In light of the above observation, *the present appeal stands dismissed*. Accordingly, the Judgment dated 14.12.2015 and award dated 06.01.2016 passed by the learned Additional District Judge 1st-cum-Motor Vehicle Accident Claims Tribunal, Saran, Chapra is confirmed with the no modification in the quantum of compensation awarded to the claimants/respondents.

21. The statutory fees amounting to Rs. 25,000/- shall be refunded to the Appellant.



22. The Appellant is at liberty to recover the compensation from the owner of the vehicle in the event of prove of breach of policy condition.

(Ramesh Chand Malviya, J)

Harshita/-

AFR/NAFR	NAFR
CAV DATE	04.04.2025
Uploading Date	11.04.2025
Transmission Date	

