

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.56 of 2017

National Insurance Company Through Its The Divisional Manager, Shanti Market, Rai Kashi Nath More, P.S.- Civil lines, District : Gaya represented through National Insurance Company Ltd. Having its Regional Office at 4th Floor, Sone Bhawan, P.S.- Sachiwalaya, District:- Patna (Opposite Party No. 1 in the Court below)

... .. Appellant/s

Versus

1. Chandramani Devi W/o Ramjee Yadav aged about 30 years,
2. Ramjee Yadav, S/o Faguni Yadav (aged about 35 years),
Applicant no.1 and 2 are mother and father the deceased, Both are resident of Village- Meghua, PO- Simla, P.S.- Kasma, District- Aurangabad Bihar, permanent resident of Village- Barorah, PO- Tineri, P.S.- Guraru, District- Gaya.
3. Md. Mattulah, Son of Late Rayasat Hussain, resident at Shimla, P.O.- Shimla, P.S.- Kasma, District- Aurangabad Bihar Owner of the Vehicle Tata Magic bearing registration no. BR-02M-5290 and opposite party no.2 in the court below

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjay Kumar Sharan, Advocate
For the Resp. No. 1 & 2	:	Mr. Rajen Sahay, Advocate
For the Resp. No. 3	:	None

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 07-11-2025

The present Miscellaneous Appeal has been preferred against the impugned judgment/award dated 12.08.2016, passed by learned Additional District Judge-Ist-cum-Chairman, Motor Accident Claim Tribunal, Gaya in MAC Case No. 115 of 2011 (D.J.)/ 21 of 2012, whereby learned Tribunal has directed the appellant/Insurance Company herein to pay compensation of Rs. 3,75,000/-, excluding Rs. 50,000/-, which was already paid to the claimants towards interim compensation, with interest @ 9% per *annum* from the date of institution of the claim petition till



the payment.

2. The factual background of the case is that one Sujit Kumar, aged about 12 years, died in a road accident on G.T. Road, N.H.-2, near Kusha More at about 6:00 AM on 09.04.2011 under Madanpur Police Station, Aurangabad District, involving the motor vehicle (Tata Magic) bearing Registration No. BR-02M-5290.

3. Subsequent to the accident, Madanpur P.S. Case No. 57 of 2011 was registered against the driver of the offending vehicle for offence punishable under Sections 279, 337, 338 and 304A of the Indian Penal Code. After investigation, charge-sheet was submitted against the FIR named accused viz., Matin Miyan @ Matiullah, son of late Riyatan @ Riyasat Hussain.

4. On the basis of the death of the deceased/Sujit Kumar on account of motor accident, claim case No. 115 of 2011 was filed by the parents of the deceased against the Insurance Company, who is the appellant herein, and one Matin Miyan @ Matiullah, son of late Riyatan @ Riyasat Hussain stating that the deceased was 12 years of age at the time of accident. It was also stated that the accident took place on account of rash and negligent driving of the driver of the offending vehicle, leading to the injury to the deceased, who



died in course of treatment at N.M.C.H, Gaya. Md. Matiullah is claimed to be owner of the vehicle. It was also stated that the vehicle was registered by the insurance company vide policy bearing No. 170907/31/10/6300004899 being valid from 26.11.2010 to 25.11.2011. It is also claimed by the claimant that the deceased was a student and earning Rs. 100 per day and total compensation amount of Rs. 4,36,500/- was claimed by the claimants.

5. On notice, the Insurance Company as well as the owner of the vehicle appeared and filed their written statements, contesting the claim petition of the claimants for compensation.

6. The application of the Insurance Company under Section 170 of the Motor Vehicles Act for permission to contest the claim petition was allowed by the Tribunal vide order dated 12.09.2014.

7. On the basis of the pleadings of the parties, the following issues were framed:-

- i. Whether the claim application is maintainable?
- ii. Whether the Claimants have any cause of action for the case?
- iii. Whether the deceased Sujit Kumar died in a motor accident occurrence on 09.04.2011 at about 6:00 AM on G.T. Road, Kusha More due to rash and negligence driving of the driver of the Tata Magic bearing Registration No. BR-02M-5290?
- iv. Whether the driver of the aforesaid Tata



Magic has/had valid driving licence at the time of the accident?

- v. Whether the aforesaid vehicle was insured with O.P. No. 1, National Insurance Company and is liable to pay the compensation amount, if yes, whether owner of the vehicle violated any terms and conditions of policy or not?
- vi. Whether the applicants are entitled to compensation?
- vii. Whether the age and occupation, income of the deceased are correct as claimed?
- viii. Whether the applicant is entitled to any other relief or reliefs?"

8. During the trial, altogether three claimant witnesses were examined viz., A.W.1- Ramjee Yadav (one of the claimants), A.W.2- Chandramani Devi (also one of the claimants) and A.W.3- Naresh Yadav.

9. During the trial, five documents have been exhibited viz., **Ext.1-** Certified Copy of the FIR, **Ext.2-** Charge-sheet, **Ext.3-** Policy Bond of alleged vehicle, **Ext.4-** Photocopy of the owner book smart card and **Ext. 5-** Postmortem report of the deceased.

10. Neither any witness has been examined, nor any document has been brought on record by the Insurance Company or the owner of the vehicle.

11. After hearing the parties and perusal of the materials on record, learned Tribunal found that the accident had taken place on account of rash and negligent driving of the offending vehicle bearing Registration No. BR-02M-5290 and



on account of the injury suffered by the victim/Sujit Kumar, the victim died.

12. Learned Tribunal also found that it could not be proved by the Claimants or the owner/driver of the vehicle that the offending vehicle was being driven by duly licensed driver at the time of the accident, because no driving license was filed by any of the parties, though the owner of the vehicle had appeared before the Tribunal on notice. It was also found by learned Tribunal that at the time of the accident, the number of the passengers in the vehicle was more than the seating capacity in the vehicle at the time of the accident. As per the evidence of the Claimants, 15-16 persons were travelling in the vehicle, including 8-10 persons sitting on its roof and the accident took place not only on account of rash and negligent driving of the vehicle, but also on account of the number of the passengers being more than the seating capacity in the vehicle. The witnesses examined on behalf of the Claimants have clearly deposed in their cross-examination that on account of excessive number of passengers in the vehicle, the driver lost the control over the vehicle. Hence, learned Tribunal found that the insured /owner of the vehicle violated terms and conditions of the insurance policy. However, the Insurance Company, who is



the Appellant herein, was not given any right to recover the compensation amount after paying the same to the legal representative of the deceased/third party.

13. It was also found that the age of the deceased was 12 years. The monthly income of the deceased was found to be Rs. 3000/-. Multiplier of twenty was applied while calculating the loss of dependency. Since the deceased was found to be unmarried, 50% of his income was deducted towards personal expenses. Hence, total compensation amount of Rs. 3,60,000/- was granted towards loss of earning and Rs. 50,000/- was granted towards future prospect, whereas Rs. 5,000/- was granted towards the funeral expense and Rs. 10,000/- was allowed towards cost of litigation and loss of love and affection. As such, total compensation was calculated to be Rs. 4,25,000/-. However, Rs. 50,000/- was already paid to the claimants as interim compensation. Hence, the remaining amount of Rs.3,75,000/- was found to be payable to the Claimants towards their compensation and the Insurance Company/Appellant was directed to pay the same to the Claimant/Respondent No.1 & 2 herein along with the interest @ 9% per annum from the date of filing the claim petition by way of account payee cheque in the names of the claimants/respondent Nos. 1 and 2 herein.



14. I heard learned counsel for the Appellant as well as learned Counsel for the Respondent Nos.1 and 2. However, the Respondent No.3 (owner of the vehicle), has not appeared despite valid service of notice.

15. Learned counsel for the Appellant submits that the grievance is confined to the right of the Insurance Company /Appellant to recover the compensation amount if paid to the Claimants by it.

16. He submits that learned Tribunal has found that the terms and conditions of the insurance policy have been violated by the owner of the vehicle. One of the terms and conditions was that the vehicle must be driven by a duly licensed driver, but during the trial, no driving license was produced by the owner or any party. As per the finding of the Tribunal, the owner/driver of the vehicle has also violated the terms and conditions by taking passengers in the vehicle beyond the seating capacity in the vehicle. As per evidence, 15-16 passengers were traveling, including 8-10 passengers sitting on the roof of the vehicle, whereas, as per the description of the vehicle in the insurance policy, the seating capacity in the vehicle was seven. In such facts and circumstances, the minimum relief which should have been granted to the



appellant/the Insurance Company is the right to recover the compensation amount payable to the claimants. But learned Tribunal has not given such right to the Insurance Company/Appellant herein, nor any reason has been assigned by the tribunal for its failure to give such right to the insurance company.

17. However, learned counsel for the respondent Nos. 1 and 2 submits that there is no illegality or infirmity in the impugned judgment/award and hence, the present appeal is liable to be dismissed.

18. In view of the rival submission of the parties, it transpires that the Insurance Company/ Appellant is aggrieved by the impugned judgment/award on account of the fact that despite the finding of learned Tribunal that the insured/owner of the vehicle has violated the terms and conditions of the insurance policy, learned Tribunal has not granted right to the Insurance Company to recover the compensation amount after paying the same to the legal representatives of the victim.

19. It also transpires that the Claimants, have not filed any Appeal or cross-appeal against the impugned judgment/award. Hence, there is no dispute in regard to any finding or the quantum of the compensation awarded to the



Claimants, who are the Respondent Nos.1 & 2 herein.

20. In view of the aforesaid facts and circumstances and rival submissions of the parties, the only point for determination by this Court is as follows:

(i) Whether the Appellant should be given right to recover the compensation amount payable by it to the Respondent Nos. 1 & 2 after payment of the same to them.

21. Before I proceed to consider the point for determination, it would be imperative to discuss the law on the subject.

Law relating to Doctrine of “Pay and Recover”

22. It is settled position of law if there is valid contract of insurance and there is no violation of terms and conditions on the part of the Insured, the insurer is legally bound to indemnify the insured, i.e owner of the vehicle. The insurer, by virtue of Section 149(1) of the Motor Vehicles Act steps into the shoes of the judgment debtor/the insured and gets bound to pay the amount awarded to the third party.

23. However, the problem arises in cases where there is no valid contract of insurance or where there is valid contract of insurance, but there is violation of terms and conditions on the part of the insured i.e owner of the offending vehicle.



24. The insurer is entitled to raise defence in a claim petition in terms of Section 149(2) of the Motor Vehicles Act and the issue of defence as provided to the Insurance Company under Section 149(2) of the Motor Vehicles Act, has been authoritatively decided by Hon'ble three Judge Bench of Apex Court in **National Insurance Company Limited Vs. Swaran Singh and Ors.** as reported in **2004 3 SCC 297** and this landmark judgment is still holding the field on the subject. As per the judgment, claimant should not be allowed to suffer and run about for release of the compensation awarded to them and it is in the fitness of things that the Insurance Company, in such cases, should first pay and then recover the amount from the owner/driver, if there is breach of terms and conditions of the Insurance policy and if such breach is fundamental or contributory to the cause of the accident. In this case, Hon'ble Supreme Court issued a detailed guideline as to how and in what circumstances "pay and recover" can be ordered. It has been also held in **Swaran Singh case** (supra) that the onus to prove the breach of any terms and condition on the part of the insured is on the insurer. The relevant para of the judgment reads as follows, by way of summary of the conclusions:

"Summary of findings

110. The summary of our findings to the various issues as



raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the



insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended



to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.”

(Emphasis supplied)

25. The Swaran Singh case (supra) was considered by Hon’ble Supreme Court subsequently in **National Insurance Company Limited Vs. Laxmi Narayan Dhut** as reported in **2007 3 SCC 700** and it was held that decision in **Swaran Singh case** (supra) has no application to cases other than the third party risks and in case of third party risks, the insurer has to indemnify the amount and if so advised, to recover the same from the insured. The same principle was reiterated by Hon’ble Supreme Court in **Premkumari Vs. Prahlad Dev, 2008 3 SCC 193.**

26. In Oriental Insurance Company Limited Vs. Nanjappan, (2004) 13 SCC 224, Hon’ble Supreme Court has held that for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is



decided against the owner and in favour of the insurer.

Present Case

27. Coming to the case on hand, I find that learned Tribunal has clearly found that it could not be proved during the Trial that the offending vehicle was being driven by duly licensed driver holding valid and effective license at the time of accident. It has been also found that the accident had taken place on account of rash and negligent driving by the driver who was driving the offending vehicle at the time of the accident. The accident also took place on account of the number of passengers sitting in the vehicle beyond the seating capacity in the vehicle. As per the evidence on record, the seating capacity of the vehicle was only seven, whereas total number of passengers travelling in the vehicle were 15 to 16, and out of them, 8 to 10 passengers were sitting on the roof of the vehicle, on account of which, the driver lost the control of the vehicle leading to the accident. As such, there is clear finding by learned Tribunal that the insured had violated the terms and conditions of the insurance policy and such breach of terms and conditions was fundamental and contributory to the cause of the accident.

28. Hence, learned Tribunal had committed error by not giving “pay and recover” right to the Insurance Company,



who is the Appellant herein.

29. Hence, the impugned judgment/award is modified to the extent that after paying the awarded compensation of Rs.3,75,000/- with interest @ 9 % per annum to the Claimants/Respondent Nos.1 & 2, the Insurance Company is given right to recover the same from the owner of the vehicle, who is Respondent No.3 herein, after paying the same to the claimants/Respondent Nos. 1 and 2 herein.

30. The present Appeal is allowed, in part, accordingly.

31. The statutory amount of Rs.25,000/-, if deposited by the Insurance Company/Appellant herein, be paid to the Respondent Nos. 1 and 2. This amount would be adjusted against the total compensation amount payable by the Insurance Company/Appellant herein to the Respondent Nos. 1 and 2.

32. LCR be sent back to the concerned Court forthwith.

(Jitendra Kumar, J.)

shoaib/ravishankar

AFR/NAFR	AFR
CAV DATE	16.09.2025.
Uploading Date	07.11.2025.
Transmission Date	07.11.2025.

