

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.702 of 2016

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The New India Assurance Company Limited Appeal and appellants through the Manager/authorized signatory, Regional Office, New India Assurance Company Limited, 6th and 7th Floor, BSFC Building, Frazer Road, Patna - 1.

... .. Appellant/s

Versus

1. Vijaya Kumari w/o Lt. Kameshwar Mahto Deceased
2. Phul Kumari w/o Anand Lal Singh (Mother)
3. Bhawna Raj d/o Lt. Kameshwar Mahto
4. Abhishek Ranjan s/o Lt. Kameshwar Mahto Res. 3 and 4 are minor under the guardianship of mother , Res.1 All the above are residents of mohalla P and T Colony, Mithanpura, P S - Mithanpura, Muzaffarpur, District-Muzaffarpur.
5. Jyoti Devi w/o Ram Prasad Shah (owner) Resident of Mohalla Beta Sahebganj, P.S. - Laheriasarai, District-Darbhang.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Durgesh Kumar Singh, Advocate
	:	Mr. Abhijeet Kumar Singh, Advocate
For the Respondent/s	:	Mr. Bal Govind Sharma, Advocate
	:	Mr. Dhannjay Kumar No.2, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 22-01-2026

Heard Mr. Durgesh Kumar Singh, learned counsel
for the appellant duly assisted by Mr. Abhijeet Kumar Singh
and Mr. Dhannjay Kumar No.2 for the claimant respondents.

2. The present appeal has been preferred for:

*“being aggrieved by and dissatisfied
with the judgment dated 07.11.2015 & award
dated 26.11.2015 passed by the learned 12th*



*Additional District Judge cum Motor Vehicle
Accident Claim Tribunal, Muzaffarpur in Claim
Case No. 326/12 'Vijaya Kumar & Ors. vs.
Jyoti Devi & Another'.*

3. The facts leading to the present appeal is/are as follows:

4. On 09.07.2012, the deceased, Kameshwar Mahto who was an Assistant Engineer with the Rural Works Department, Bihar, Patna, was going to Darbhanga on his motorcycle. As he reached near Taralahi, a Tractor bearing Registration No. **BR-07-G-4161** in a rash and negligent manner hit the motorcycle from behind, Kameshwar Mahto sustained grievous injuries, taken to the Darbhanga Medical College, Darbhanga where he died in course of treatment on 09.07.2012.

5. The usual F.I.R./investigation/submission of charge-sheet followed the present **Claim case no.329 of 2012** by the deceased's family members including the wife and the children (**Vijaya Kumari & Ors. vs. Jyoti Devi & Anr.**). The second respondent is/was the **New India Assurance Company Limited** (henceforth for short '**the Insurance Company**') with which the Tractor was insured.



6. The matter went up before ‘the Tribunal’ and the issues were framed as under:

(i) whether the claim case as framed is maintainable?

(ii) whether claimants have got cause of action and right to sue?

(iii) whether the accident had taken place on 09.07.2012 at 9:30 AM at near Taralahi P.S. Bahadurpur, District-Darbhanga by attending vehicle bearing registration No. BR-07-g-4161;

(iv) whether the driver of offending vehicle was driving the said vehicle very rashly and negligently at the time of alleged accident;

(v) whether offending vehicle was insured at the time of alleged accident;

(vi) whether the driver of offending vehicle had legal valid driving license at the time of accident?

(vii) what should be quantum, if compensation is granted and who is liable to pay the same?

(viii) are the claimants entitled to get any other



reliefs or reliefs?”

7. The parties put forward their respective submissions whereafter to ‘the Tribunal’ vide an order and judgment dated 07.11.2015 and 26.11.2015 came to the conclusion that:

(i) Kameshwar Mahto was moving on the motorcycle on the said date (09.07.2012). As he stopped and was in conversation with a friend, the Tractor bearing registration no.BR-07-G-4161 came from behind and in a rash and negligent manner hit him causing injuries. He was shifted to the Darbhanga Medical College & Hospital, Darbhanga but as recorded above, he died in course of the day;

(ii) the Tribunal further came to the conclusion that the said Tractor was insured with ‘the Insurance Company’ with valid insurance certificate (from 29.05.2012 to 28.05.2013) and as such, ‘the Insurance Company’ also has the responsibility towards the payment.



8. The admitted fact that 'the Tribunal' recorded is/was that the deceased was employed with the Rural Works Department, Bihar, Patna. He was who was 54-55 years of age at the time of accident and considering that his salary statement shows the income as Rs.47,941/-, thus multiplying the same and deduction towards personal expenses; it was held that the claimants are entitled to **Rs.42,27,428/-**.

9. As already compensation of **Rs.50,000/-** was paid earlier, it came down to Rs.41,77,428/- with interest of six percent per annum from the date of filing of the appeal till the payment is made. This order came to be passed by the learned 12th Additional District Judge cum Motor Vehicle Accident Claim Tribunal, Muzaffarpur on 07.11.2015/Award dated 26.11.2015.

10. Aggrieved, the present appeal.

11. Learned counsel representing the appellant Company submits that the **Bahadurpur P.S. Case No. 252 of 2012** was lodged on 09.07.2012 against the unknown Tractor Driver and as such, it cannot be said that the Tractor bearing Registration No. BR-07-G-4161 was involved in the said accident. In that background, 'the Insurance Company' is not liable to make any payment.



12. The alternative submission is that the salary amount was shown without the income tax deduction and as such, 30 percent income tax deduction should have been there in the final payment.

13. Mr. Dhannjay Kumar No.2, representing the claimants on the other hand has taken this Court to the copy of the case diary to show that though the lady claimant who was not present at the spot rightly lodged the F.I.R. against unknown Tractor the fact remains that the Police seized the aforesaid Tractor Registration No. BR-07-G-4161 alongwith Tailor BR-07-G-4197 on 09.07.2012 itself. Subsequently, a request was also made to the Motor Vehicle Inspector for its inspection. Learned counsel submits that in that background, the first point raised by 'the Insurance Company' has to be rejected.

14. So far as the second submission regarding the deduction of income tax in concerned, learned counsel for the claimants has taken this Court to an order of the **Hon'ble Apex Court** in the case of **Ranjana Prakash and Ors. vs. Divisional Manager & Anr.** reported in **2011 (5) SC 382** with reference to paragraph no.9 to show that 'the Tribunal' failed to include the future prospect of 30 percent and as such, 30%



income tax deduction as claimed by 'the Company' will bring the total deduction to zero. Thus, the appellant Company's case is fit to be rejected.

15. Having heard the parties and perusing the record, the Court has taken note of the facts that:

(i) the deceased was working as an Assistant Engineer with the Rural Works Department, Bihar, with a fixed salary;

(ii) he was moving on a motorcycle which was hit by the Tractor bearing Registration No. BR-07-G-4161;

(iii) the aforesaid Tractor was seized by the Police on 09.07.2012 itself as per the case diary of the case and a request was made to the Motor Vehicle Inspector for its inspection;

(iv) the Tractor in question was insured with 'the Insurance Company' with validity period from 29.05.2012 to 28.05.2013;

(v) in that background, the claim against first point raised by 'the Insurance Company' is rejected.

16. So far as the second point regarding the 30



percent income tax deduction is concerned, this Court has gone through the **Hon'ble Apex Court** in the case of **Ranjana Prakash & Ors.** (supra). In that case, the High Court had passed an order for the deduction of 30 percent income tax amount on the appeal preferred by 'the Insurance Company'. The Hon'ble Apex Court while setting aside the said order in paragraph nos. 9 and 10 held as under:

*“9. In Sarla Verma, this Court held that where the deceased had a permanent job with a regular salary with provisions for periodic increases, 30% of the current income could be added towards future prospects if the deceased was aged between 40 to 50 years. In Sarla Verma, this Court also stated that income tax paid should be deducted from the annual income to arrive at the 'income' which will form the basis for calculating the compensation. The Tribunal did neither of these two things. **If both are done, the result would be that there would be no change in the income arrived by the Tribunal for calculating the compensation. The 30% increase on account of future***



prospects and the 30% deduction on account of income tax would cancel each other, resulting in the 'income' remaining unchanged. As a result, the compensation awarded by the Tribunal also would remain unaltered.

10. In view of the above, we allow this appeal, set aside the order of the High Court and restore the award of the Tribunal, though for other reasons."

(emphasis added)

17. Having taken note of the said paragraphs, it is clear that even if the claim of the appellant company of 30% Tax deduction is taken into account and if the future prospect of 30% is added, the deduction would come to zero as the adding of the future prospect of 30% and deduction of 30% Income Tax deduction of 30 percent will cancel each other resulting in the total income remaining unchanged. In that background, the compensation awarded by 'the Tribunal' shall remain unaltered. Thus, the second contention also goes.

18. No other point has been raised by the appellant Company.



19. In that background, no interference in the order is required. The **M.A. No. 702 of 2016** is dismissed. As the Rs.50,000/- has already been paid, the amount of Rs.41,77,428/- along with 6 percent interest has to be cleared to the lady by 19.02.2026.

20. If the payment is not made by ‘the Insurance Company’ by 19.02.2026, the lady claimant shall be entitled to Rs.25,000/- as cost which can be realised from the erring official which delays the payment.

21. Needless to add, if there has been any statutory violation, ‘the Insurance Company’ always has the right to agitate the matter in accordance with law.

22. The statutory amount if any, has to be returned.

(Rajiv Roy, J)

vinayak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.01.2026
Transmission Date	NA

