IN THE HIGH COURT OF JHARKHAND AT RANCHI

Miscellaneous Appeal No. 459 of 2017

New India Assurance Co. Ltd, Almora Bhawan, Radheshyam Lane, Main Road, P.O. Ranchi, P.S. Kotwali, Town & District- Ranchi

... Opposite Party No.1/Appellant

Versus

1. Ashok Giri son of Late Mathura Giri, resident of Village & P.O.- Lakhnu Chhalta, P.S. Katkamsandi, District- Hazaribagh (Driver) (Opp. Party No.2)
2. Manu Rana son of Balo Rana (Opp. Party No. 3)
3. Aditya Rana son of Jagdish Rana (Opp. Party No. 4)
   Respondent No. 3 & 4 residing at Village & P.O. - Itkhori P.S. Itkhori District- Chatra
4. Kavita Devi Wife of late Uma Shankar Giri @ Umi Giri - Residing Prior to death of her husband with her father at village & P.O. Dulmah, P.S. Barhi District- Hazaribagh (Opp. Party No. 5)
5. Basudeo Giri son of Dharam Giri, resident of Village- Saledih, P.O. & P.S. Barkatha, District- Hazaribagh (Opp. Party No. 6)
6. Dharam Giri son of Late Dulo Giri resident of village- Village- Saledih, P.O. & P.S. Barkatha, District- Hazaribagh (Opp. Party No. 7)

... Respondents

With

Cross Objector No. 26 of 2021

Kavita Devi (aged about 33 years) Wife of Late Uma Shankar Giri @ Umi Giri Village and Post Dulmah, P.S. Barhi, District - Hazaribagh

… .. Cross objector

Versus

1. New India Assurance Company Limited Atma Ram Bhawan (Almora Bhawan) Radheyshyam Lane, Main Road, Post - Ranchi, P.S. Kotwali, Ranchi - 834001 - District – Ranchi
2. Ashok Giri Son of Late Mathura Giri (Driver) Resident of village and P.O. Lakhanu Chhalta, P.S. Katkamsandi District Hazaribagh
3. Manu Rana son of Balo Rana Resident of Village Itkhori Post and P.S. Itkhori District – Chatra.
4. Aditya Rana son of Jagdish Rana Resident of Village Itkhori Post and P.S. Itkhori District Chatra
5. Badudeo Giri son of Sri Dharam Giri Resident of Village - Saledih, Post and P.S. Barkatha District – Hazaribagh

6. Dharam Giri son of Late Dulo Giri Resident of Village - Saledih, Post and P.S. Barkatha District – Hazaribagh

... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mr. Alok Lal, Advocate
For the Respondents: Mr. Arvind Kumar Lall, Advocate
Mrs. D. Arati Kumari, Advocate
Mr. Shivam Singh Kashyap, Advocate
[in M. A. No. 459 of 2017]
For the C.O.: Mr. Arvind Kumar Lall, Advocate
Mrs. D. Arati Kumari, Advocate
Mr. Shivam Singh Kashyap, Advocate
For the Respondents: Mr. Alok Lal, Advocate
[C. O. No. 26 of 2021]

09/Dated: 11.09.2026

1. I.A. No. 6636 of 2017 seeks condonation of delay of 34 days in instituting M. A. No. 459 of 2017.

2. I have perused the averments in the I.A., and I am satisfied that sufficient cause has been shown. The delay is also not inordinate.

3. Accordingly, I condone the delay and dispose of I.A. No. 6636 of 2017.

4. This appeal and cross-objection are directed against the judgment and Award dated 29th March, 2017 in Claim Case No. 166 of 2004 made by the Presiding Officer, Motor Vehicle Accident Claims Tribunal at Hazaribagh.

5. Mr Alok Lal, the learned counsel for the appellant-Insurance Company, has contended that in this case the insured vehicle did not possess a road permit, and that plying the insured vehicle without a road permit would constitute a fundamental breach of the terms and conditions of the insurance policy. Accordingly, he submitted that the Insurance Company should

have been exonerated from liability to pay any compensation, or, at the very least, a pay and recover order could have been made.

6. Mr Arvind Kumar Lall learned counsel for the claimants, at the outset submitted that the 1st respondent Renu Devi, the mother of deceased Uma Shankar Giri, has recently expired. He, however, submitted that her legal representatives are already on record as respondent Nos. 5, 6 and 7.

7. Accordingly, the requirement of filing any separate application for bringing heirs on record is dispensed with. The appellant must only carry out a formal amendment in the cause title indicating that Renu Devi has since expired and therefore stands deleted. Such amendment can be carried out forthwith.

8. Insofar as the only plea raised and pressed on behalf of the appellant-Insurance Company is concerned, reference can be made to the written statement of the appellant-Insurance Company. Nowhere in the written statement has any specific plea been raised that the insured vehicle did not have a road permit and, therefore, there was a fundamental breach of the terms and conditions of the insurance policy.

9. Paragraph 7 of the written statement refers to the Driver of the insured vehicle not having a licence. This plea was examined and found to be incorrect. Paragraph 8 merely states that the claimants or the owners should be required to produce and prove documents such as a road permit, tax token, certificate of fitness, registration document, etc. Further, paragraph 8 states that, in case they fail to do so, it should be presumed that there

is a statutory violation of the conditions of the policy and the provisions of the Motor Vehicles Act.

10. The plea in paragraph No. 7 or 8 does not constitute a categorical plea to deny liability on the ground of the absence of any permit or a fundamental breach of the terms and conditions of the insurance policy.

11. In any event, there is no evidence to substantiate such an alleged plea. In terms of the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Swaran Singh & others, (2004) 3 SCC 297*****,** the onus of establishing a fundamental breach of the terms of the insurance policy lies with the Insurance Company which raises such a plea. Further, in ***Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and others, 1985 ACJ 397 (SC)****,* the Hon'ble Supreme Court has held that the insured is not under an obligation to furnish evidence to enable the Insurance Company to wriggle out of its liability.

12. Therefore, considering the pleadings, the record, and the legal position explained by the Hon'ble Supreme Court hereinabove, the only plea raised on behalf of the Insurance Company is liable to be rejected and is hereby rejected.

13. Kavita Devi, wife of the deceased, has filed a cross-objection claiming enhanced compensation.

14. In this case, the Tribunal has assessed the income of the deceased at Rs. 3,000/- per month or Rs. 36,000/- per annum. However, the claimants examined several witnesses who deposed that the deceased was working as a *Rajmistry* and

earning Rs. 5,000/- per month. No doubt, no documentary evidence has been produced to prove the income. The Tribunal, relying upon ***Most. Sudamiya & Ors. Vs. The New India Assurance Co. Ltd., 2010 (1) JCR 472*** has referred to the minimum wages and concluded that the deceased must have been earning Rs. 3,000/- per month.

15. In this case, several witnesses have stated that the deceased was a *Rajmistry* and earned Rs. 5,000/- per month. Simply because no documentary evidence was available, there was no basis to determine the income at only Rs. 3,000/- per month, which represents the minimum. In the facts of this case, and considering the evidence on record, it would be appropriate to take the deceased's income at Rs. 4,000/- per month or Rs. 48,000/- per annum.

16. The deceased was 30 years old at the time of the accident. Therefore, an amount of 40% towards future prospects will have to be added. Thus, the yearly income of the deceased together with future prospects can be safely taken at Rs. 67,200/- per annum.

17. Out of the above amount, a deduction of 1/3rd is due towards the expenses that the deceased would have incurred for himself. Therefore, for the purpose of determining compensation for dependency, the deceased's yearly income will have to be taken at Rs. 44,800/-.

18. The multiplier in this case, by following the law laid down in the case of ***Sarla Verma (Smt) and others Vs Delhi Transport Corporation and another, (2009) 6 SCC 121, and National***

Insurance Company Limited Vs Pranay Sethi and others, (2017) 16 SCC 680, would be 17. Therefore, the compensation towards dependency would come to Rs. 7,61,600/-.

19. Besides, towards consortium, considering the number of dependents as 4, the compensation of Rs. 40,000/- per dependent would have to be paid, which comes to Rs. 1,60,000/-. Since Renu Devi has expired, her share will have to be distributed equally among the three dependents, who are now Renu Devi's legal representatives.

20. Further, compensation of Rs. 15,000/- towards funeral expenses and a further Rs. 15,000/- towards loss of estate will have to be awarded.

21. Thus, the total compensation liable to be awarded in favour of the dependents would come to Rs. 9,51,600/-. By allowing the cross-objection, the compensation amount is therefore enhanced to Rs. 9,51,600/-.

22. The Tribunal has awarded interest at 6% per annum from the date of framing of the issues. However, the Tribunal also held that if the compensation amount is not paid within 30 days, interest shall be at 9% per annum.

23. There is no justification for awarding interest only from the date of framing of issues. The normal rule is that interest should be awarded from the date of the claim petition unless there exist circumstances to deviate from this normal rule.

24. However, considering the law laid down in ***Shishu Pal @ Shish Ram & Ors. v. Surjeet & Ors., 2026 INSC 634***, there is nothing wrong in awarding graded interest rate. Still, considering that

the accident took place in 2004, the interest in default should have been at 7.5% per annum, not 9% per annum.

25. As a result, the appeal and the cross-objection are disposed of by enhancing the compensation to Rs. 9,51,600/- with interest at 6% per annum from the date of institution of the claim petition, and if the originally awarded amount was not paid within 30 days, at 7.5% per annum from the date of filing of the claim petition.

26. The appellant-Insurance Company must deposit the compensation amount as now determined after adjusting the payments, if any, that may have been made or deposited (including statutory deposited amount). This must be done within six weeks from today after giving due intimation to the learned counsel for the claimants/dependents.

27. Upon deposit, the claimants (after amendment in cause title), i.e. respondent Nos. 4, 5 and 6, are permitted to withdraw the said amount. The Registry should transfer this amount to their respective bank accounts once they make their identity and bank details available to the Registry. Under no circumstances should the transfer be made except through regular banking channels.

28. Other pending Interlocutory Applications, if any, do not survive and are disposed of.

(M. S. Sonak, C.J.)

September 11, 2026
N.A.F.R.
APK/VK
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