IN THE HIGH COURT OF JHARKHAND AT RANCHI

Miscellaneous Appeal No. 34 of 2018

Magma HDI General Insurance Co. Ltd., Magma House, 2A Park Street, Kolkata 700016, through Shikhar Sinha, son of Harendra Narain Sinha, aged about 30 years, Deputy Legal Manager, working at Branch situated at 2nd Floor, Shiv Laxmi Para, Opposite to Rajendra Nagar Terminal, Kankarbag, P.O. Kankarbagh, P.S. Kankarbag, District Patna 800 020 (Bihar).

... Appellant

Versus

1. Sakarat Bibi, wife of Late Sahud Mian, aged about 45 years.
2. Md. Maksud Ansari, son of Late Sahud Mian, aged about 26 years.
   Both resident of Village Ghurnibera, P.O. Sunderpahari, P.S. Tundi, District Dhanbad.

3 (A) Eklakh Hussain
3 (B) Ekbal Hussain
3 (C) Imtiyaz Hussain
3 (D) Riyaz Husain
All sons of Late Dildar Hussain, resident of village Mahjori, P.O. + P.S. Margomunda, Distt. Deoghar.

4. National Insurance Company Limited ... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mr. Alok Lal, Advocate
For the Claimants: Md. Zaid Ahmad, Advocate
Mr. Aman Ali, Advocate
For Resp. No. 4: Mr. Amaresh Kumar, Advocate
Ms. Rashi Sharma, Advocate
Ms. Riya Raj, Advocate

20/Dated: 25.09.2026

1. Heard Mr Alok Lal, learned counsel for the appellant, Md. Zaid Ahmad, learned counsel for the 1st and 2nd respondents, i.e. claimants, and Mr Amaresh Kumar, learned counsel for the 4th respondent, i.e. National Insurance Company Limited.

2. The appellant, Magma HDI General Insurance Company Limited (Magma), challenges the judgment and Award dated 30th November, 2017, made by the District Judge-IX-cum-M.A.C.T., Dhanbad, in Title (M.V.) Suit No. 86 of 2014 on the ground that

the offending vehicle was not insured on 09.12.2012, when it was involved in an accident in which Sahud Mian was killed. Accordingly, Mr Alok Lal submitted that the impugned Award, foisting liability on the appellant-Magma, warranted interference.

3. Mr Alok Lal submitted that, in this case, the Insurance Policy/cover note specified the time and date from which the Insurance Policy was to be effective. Relying on ***Oriental Insurance Co. Ltd. vs. Porselvi & Another, (2009) 15 SCC 116*** and ***New India Insurance Co. Ltd. vs. Bhagwati Devi & Ors, (1998) 6 SCC 534***, Mr Alok Lal submitted that a special contract comes into being, effective from the time and date mentioned in the cover note/policy itself.

4. Mr Lal further submitted that, after the impugned award was made, the appellant-Magma secured a copy of the Insurance Policy issued by National Insurance Company Limited (R-4) in respect of the offending vehicle. The validity period of the said insurance was from 16.12.2012 to the midnight of 15.12.2013. He submitted that this evidence ought to be considered by this Court under the provisions of Order XLI Rule 27 of the Code of Civil Procedure. He further submitted that, from this policy, it was clear that the offending vehicle was insured with the National Insurance Company Limited and not with the appellant-Magma on the date of the accident.

5. Mr Amaresh Kumar, the learned counsel for the National Insurance Company Limited, in response to this Court's order dated 19.07.2022, submitted that since the copy furnished to him was not quite legible and concerned the year 2012, the National Insurance Company Limited was unable to verify whether the

said copy concerned the offending vehicle and was a genuine document.

6. Since the dispute in this appeal was primarily between the appellant, Magma, and the National Insurance Company Limited (R-4), the executing court, by order dated 10.04.2026, was directed to release 50% of the compensation. The record shows that, before this order, the claimants were allowed to withdraw 50% of the compensation amount. Thus, the order directs release of the entire compensation amount to the claimants. The learned counsel for the claimants' states that the amount has been released in favour of the claimants.

7. Thus, the real dispute in this appeal revolves around an issue of whether the offending vehicle was insured with the appellant-Magma on 09.12.2012 at about 5:30 p.m., i.e. the date and the time of the accident in which Sahud Mian was killed, and his dependents were forced to file a claim petition seeking compensation.

8. Insofar as the above point for determination is concerned, the Tribunal framed issue (vi) as to whether the vehicle was insured with appellant-Magma at the time of the accident.

9. At that stage, National Insurance Company Limited was not even a party to the claim petition.

10. The above-referred issue No. (vi) was answered by the Tribunal in the following terms: -

> ***"Issue No.6****- This issue read as under whether vehicle in question was insured from Magma HDI General Insurance Co. Ltd. at the time of accident. This is the most important issue involved in this suit. This issue have been framed on the basis of pleadings of defendant no.2 i.e. the written statement in which this*

defendant has denied that the vehicle in question was never insured on the date of accident i.e. on 09.12.2012 under any policy issued by this defendant no.2 in favour of the owner of the tractor i.e. defendant no-1. The Ld. counsel appearing on behalf of defendant no.2 whementally argued on this point, rather emphasized his argument on this point alone that the vehicle in question was insured at the relevant date and accident and referred ext.-A which have been brought on record by the defendant no.2 and i.e. the copy of insurance policy of offending tractor bearing its engine no. and chasis no. issued in the name of Dildar Hussain who is owner of Tractor and defendant no.1 of this suit and as argued this policy issued by defendant no.2 covers the period of insurance commencing from 14.43 hours of 16.12.12 to mid night of 15.12.2013 and the date of accident as per plaint as well as FIR is 09.12.2012 and thus, apparently the date of accident is not covered by this policy exhibit - A. On the other hand the ld. counsel appearing on behalf of plaintiffs opposed the arguments advanced by the ld. counsel of defendant no.2 and draw the attendance of this court towards ext.-6 which is the copy of insurance policy certificate of the offending vehicle bearing regn. no. JH21C-3340 and this document i.e. insurance policy is also appended with the customer copy issued on dated 27.11.2012 by the authority of Magma H.D.I. General Insurance Co. Ltd. In favour of the owner of the tractor Dildar Hussain and the policy no. is the same which find mentioned in this document also, which goes to prove this fact that the premium for the policy was paid by the owner of the tractor on the date of purchased of the said vehicle i.e. on 27.11.2012 but however the insurance company has issued the policy covering the period 16.12.2012 to 15.12.2013 and for that the owner defendant no.1 is not responsible at all. On bare reading of this document it goes to so that the authority has insured that the vehicle for which this insurance policy is covered shall also covered any accident, theft and damages to any third party life and property. Thus, it shall

> *covered the accident dated 09.12.2012 and it shall be presumed that this policy bearing no. P0013400002/4107/111933 is the same policy which was in-fact issued in favour of defendant no.1 on 27.11.12. The deceased Sahud Mian is a third party who was victim of the accident and thus, the applicants are entitled for compensation regarding accidental death in a motor vehicle accident of the deceased from defendant no.2 under which the offending vehicle was validly insured. Thus this issue is decided in favour of plaintiff and as against defendants."*

11. The Tribunal, in paragraph 5 of the impugned Award, has noted that the owner of the offending vehicle and the insurer, Dildar Hussain, had died during the pendency of the claim petition. The claimants, it appears, did not bring on record the legal representatives. If it were to be proved that the offending vehicle was duly insured on the date of the accident, then the liability of the owner and the Insurance Company would be joint and several. In such a situation, the claim petition would survive against the Insurance Company.

12. However, now that the appellant-Insurance Company wishes to contend that the liability must be foisted on Dildar Hussain alone, the issue gets complicated. The appellant-Insurance Company-Magma, despite the clear statement in paragraph 5 of the impugned Award, chose to file the appeal, *inter alia,* against Dildar Hussain, who was admittedly dead. The very institution of such an appeal was clearly defective.

13. Even service was attempted to be issued on Dildar Hussain, despite clear knowledge that Dildar Hussain had died even before the impugned Award was made. The service report

naturally stated that Dildar Hussain had died on 29.12.2013 and therefore could not be served.

14. After that, the appellant filed I.A. No. 5180 of 2021 with a bold plea that it was not aware that Dildar Hussain, the owner of the insured vehicle, had died during the pendency of the claim petition. Since in paragraph 5 of the impugned Award, the Tribunal had clearly mentioned that Dildar Hussain had died during the pendency of the claim petition, the appellant-MAGMA could not have feigned ignorance of this fact and instituted the appeal against a dead person. Based on a clear misstatement, the appellant impleaded the legal representatives of Dildar Hussain in this appeal, and now attempts to foist liability on them.

15. The National Insurance Company Limited, which was never a party in the original claim petition, has also been impleaded as a respondent in this appeal.

16. On 19.07.2022, this Court did request Mr Amaresh Kumar to verify whether the Insurance Policy annexed to I.A. No. 5181 of 2021 was a genuine document and concerned the offending vehicle. Any response by Mr Amaresh Kumar either way could never have been regarded as legal evidence. In any event, the query was posed only to see whether there was any *prima facie* substance in the contention now raised.

17. The application invoking Order XLI Rule 27 was filed only on 14th September, 2021, i.e. almost 7 years after the claim petition was filed, 4 years after the impugned Award was made and 3 years after this appeal was filed. The application simply states that *"after much persuasion with Division XV, Kolkata of the National Insurance Company Limited, they have furnished copy of the policy with their endorsement much after passing of the*

impugned order, and as such, this piece of evidence was not in possession of the appellant company at the time of proceeding before the Tribunal".

18. There is no date on which this copy was furnished to the appellant-Magma. There is no reference to the person furnishing such a copy. There is no explanation why such persuasion was not undertaken soon after the written statement was filed in the claim statement. There is no explanation why it took the appellant-Magma so many years to obtain the copy now annexed to the application invoking Order XLI Rule 27. Based on such a vague plea, it would not be appropriate to allow the application under Order XLI Rule 27.

19. If the I.A. is to be allowed, surely, a copy of the cover note for the certificate of Insurance cannot be read into evidence as it stands. Simply because the appellant-Insurance Company was not diligent enough, it would be harsh and inequitable to visit the claimants and legal representatives of Dildar Hussain, who were brought on record based on a misrepresentation by the appellant, and make them suffer. Besides, such alleged evidence is not even necessary to pronounce judgment on this issue.

20. For all those reasons, I.A. No. 5181 of 2021 is liable to be rejected and is hereby rejected.

21. On the issue as to whether the offending vehicle was indeed insured on the date of the accident, there is clear evidence that the owner, Dildar Hussain, paid, and the appellant-MAGMA accepted the premium for obtaining/issuing the Insurance Policy on 27.11.2012. The appellant-Insurance Company never informed Dildar Hussain that it was rejecting or intending to reject the insurance proposal for any reason. Unilaterally, the appellant-

Magma purported to make the Insurance Policy effective from 16.12.2012 to 15.12.2013. Based on its unilateral action, the appellant-Magma now wishes to avoid, or at least wriggle out of, the liability imposed upon it.

22. In ***Oriental Insurance Co. Ltd. v. Dharam Chand & Ors., Civil Appeal No. 5204 of 2003***, decided by the Hon'ble Supreme Court on 27.08.2010, an almost identical issue arose, and the appellant-Insurance Company raised an identical defence. The same was turned down by the Hon'ble Supreme Court, and the entire decision, which comprises five paragraphs, is transcribed below for the convenience of reference: -

> *"1. This appeal arises from a motor accident claim.*
>
> *2. In this case, the premium cheque for the insurance policy was received by the appellant, the insurance company, on May 7, 1998 at 4.00 pm and a cover note was issued at the same time. In columns 3 & 4 of the cover note, however, it was stated that the insurance would commence from May 8, 1998 and expire on May 7, 1999.*
>
> *3. The motor accident in regard to which the claim case was filed took place at 8:30 pm on May 7, 1998.*
>
> *4. The insurance company sought to disown its liability on the plea that the accident took place before the commencement of the insurance as indicated in the cover note. But, both the Tribunal and the High Court, turned down the plea and held the insurance company liable to pay the compensation amount.*
>
> *4. When this appeal was taken up, counsel for the insurance company very fairly stated that since the cheque for the premium amount was received by the company at 4:00 pm on May 7, 1998, the insurance must be deemed to have commenced from that time and four hours later when the vehicle met with the accident, the owner must be deemed to have been covered by the*

insurance policy. We appreciate the fairness shown by the counsel for the insurance company.

5. The appeal is dismissed but with no order as to costs."

23. Similarly, in ***D. Srinivas Vs. SBI Life Insurance Company Limited and others, (2018) 3 SCC 653***, the Insurance Company accepted the premium on 29.09.2008. In December 2009, the appellant's son died, and on 18.01.2011 the Insurance Company informed the appellant that the policy was not accepted because the same was not preceded by a medical examination. The appellant sought a refund of the premium amount.

24. The Hon'ble Supreme Court, on the above facts, held that upon accepting the premium amount on 29.09.2008, the Insurance Company waived the pre-condition of medical examination of the insured. Accepting the premium amount resulted in a concluded contract. Subsequent repudiation of the policy or the proposal was therefore neither legal nor just.

25. The above two decisions do not support the appellant-Magma's contention in this matter.

26. In **Oriental Insurance Co. Ltd. Vs. Porselvi (supra)** relied upon by Mr Lal, the factual position was not quite the same as in the present matter. In any event, the Hon'ble Supreme Court remitted the matter for fresh consideration after adverting to the factual position involved in the said case.

27. In ***New India Insurance Co. Vs. Bhagwati Devi (Supra)***, the appellant-Insurance Company sold the policy at about 4:00 p.m. on 17.02.1989. The Hon'ble Supreme Court noted that *"undeniably, it had been brought at a time when an accident pertaining to the vehicle insured had already taken place at about*

9:00 a.m. the same day". Thus, the facts in the said case are completely different, and based upon this decision, the appellant-Magma's contention cannot be upheld.

28. Accordingly, the above point arising in this appeal must be decided against the appellant-Magma.

29. The appeal raises no ground regarding the quantum of compensation. The appellant-Insurance Company, without raising a specific ground to challenge the quantum of compensation, cannot be permitted to urge such ground in appeal. If a specific ground had been raised, the claimants could have filed their cross-objections.

30. Accordingly, this appeal is dismissed without any order for costs.

31. Since the awarded amount is stated to have been paid, leave is granted, at Mr Alok Lal's request, to withdraw the statutory deposit, together with any interest that shall have accrued thereon.

32. Pending Interlocutory Applications, if any, do not survive and are disposed of.

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

September 25, 2026
N.A.F.R.
APK/VK
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