IN THE HIGH COURT OF JHARKHAND AT RANCHI

**M.A. No. 209 of 2017**

The Branch Manager, National Insurance Co. Ltd., Samtum 85 G Road, Gaya, P.0., P.S. Gaya District : Gaya, Bihar, PIN-823001 through Local Branch Divisional Manager, National Insurance Company Limited, Sec-I, Ram Mandir, P.O. & P.S. Bokaro Steel City, Bokaro Steel City, District-Bokaro, duly represented through its Administrative Officer, National Insurance Company Limited, Jharkhand Legal Cell, Kutchery Road, Post Office-G.P.O., Police Station-Kotwali, District-Ranchi-834001 .... Appellant

Versus

1. Ashish Kumar (minor)
2. Soni Kumari (minor)
3. Ritik Kumar (minor)
4. Ansu Kumar (minor)
5. Bandhu Prasad s/o late Prayag Ram,

Respondent nos. 1 to 4 are represented through their next friend namely, Bandhu Prasad s/o late Prayag Ram (respondent no.5 herein) and the said respondent no.5 has no adverse interest against the respondent nos. 1 to 4

All Residents of Village-Pordag, P.O. & P.S Petarbar, District-Bokaro.

6. Nagendra Kishore Agrawal s/o Sri Rup Kishore Agrawal, Resident of Village -Shivganj, P.O. & P.S. Dehri-on-son, District-Rohtas, State: BIHAR (Owner)
7. Md. Sahab s/o Allauddin, Resident of Village-Mukhiganj, P.O. & P.S. Kukhiganj, District-Allahabad, State: Uttar Pradesh. (Driver) ... Respondents

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**CORAM: HON'BLE THE CHIEF JUSTICE**

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For the Appellant: Mr. Pratyush Kumar, Advocate
Ms. Tara Gupta, Advocate
Mr. Vishwajeetjee Chaturvedi, Advocate

For the Respondents: Ms. Pinki Kumari, Advocate.

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**10/Dated: 11.09.2026**

**1.** Heard learned counsel for the parties.

**2.** I.A. No. 2997 of 2017 sought appointment of the 5th respondent as a guardian on behalf of respondent Nos. 1 to 4.

**3.** Learned counsel for the applicant now states that respondent Nos. 1 to 4 have already attained majority.

**4.** Accordingly, I.A. No. 2997 of 2017 is rendered infructuous and is disposed of as such.

**5.** This appeal is directed against the judgment and Award dated 24th November 2016 passed by District Judge-1st-cum-Motor Accident Claim Tribunal at Bokaro in T.M.V. No.40 of 2009.

**6.** Mr. Pratyush Kumar, the learned counsel for the appellant submitted that the offending vehicle had no permit at the time of the accident and this amounts to a fundamental breach of the terms and conditions of the insurance policy. Accordingly, he submitted that the insurance Company should not have been held liable for payment of any compensation and, at the highest, an order for payment and recovery could have been made in this matter.

**7.** Ms. Pinki Kumari, the learned counsel for the claimants, defends the impugned order on the basis of the reasoning set out therein. She also points out that no plea regarding the absence of a permit was raised in the written statement, and that the appellant-Insurance Company has not adduced any evidence to support such a plea. Accordingly, she submits that this appeal should be dismissed.

**8.** The rival contentions now fall for determination.

**9.** In the written statement filed by the appellant-Insurance Company, no categorical plea is raised about the insured vehicle having no permit at the time of the accident. Based upon a general plea that the claimants or the owner should be called upon to produce all documents, such an argument about absence of a permit or fundamental breach of the terms and conditions of the Insurance policy on such ground, cannot be raised.

**10.** Significantly, in the absence of a plea, the Tribunal also did not find it necessary to frame any issue on the plea now urged. The appellant-Insurance Company also did not press for framing of such issue. The appellant-Insurance Company has also failed to adduce any evidence in this matter to discharge the burden of proving a fundamental breach of the terms and conditions of the insurance policy.

**11.** In the case of ***National Insurance Co. Ltd. vs. Swaran Singh & Ors., (2004) 3 SCC 297***, the Hon'ble Supreme Court has held that the onus of establishing fundamental breach of the terms and conditions of the insurance policy would lie upon the insurance company which raises such a appeal. In ***Narcinva V. Kamat vs. Alfredo Antonio Doe Martins***, ***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.** Considering the above legal position and the fact that the Insurance Company raised no categorical plea and laid no evidence, the plea now raised cannot be accepted.

**13.** Mr Pratyush Kumar states that in terms of this Court's order dated 20.02.2026, the awarded amount has been deposited.

**14.** The learned counsel for the claimants is not sure whether this amount has been deposited or not. If the amount is indeed deposited, liberty has already been granted to the respondent-claimants to withdraw the same together with interest, if any, that shall have accrued on such amount. This liberty is once again reiterated.

**15.** If there is any shortfall in the deposit or the amount has not been deposited, then the appellant-Insurance Company is directed to deposit such amount by adjusting the amounts already paid within four weeks from today, after giving due intimation to the learned counsel for the claimants.

**16.** In any event, the claimants are at liberty to file/press for execution in case they are still not satisfied with the deposit made or if the deposit is not made.

**17.** Upon satisfaction that the entire amount has been deposited and paid to the claimants, the appellants are permitted to withdraw the statutory deposited amount.

**18.** The appeal is dismissed with the above directions and no order for costs.

**19.** Interlocutory applications, if any, will not survive and are disposed of.

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

11.09.2026
N.A.F.R.
APK/VK
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