IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 387 of 2017

M/s National Insurance Co. Ltd., through Divisional Manage, B.P. Agarwalla Building, P.O.- Dhansar, P.S.- Bankmore, District- Dhanbad (Insurer of Tractor bearing No. BR-21C-6748).

... ... Appellant

Versus

1. Sudama Tiwary, son of Late Jadulal Tiwary;
2. Pawan Tiwary, son of Sudama Tiwary;
3. Gyani Pathak, daughter of Sudama Tiwary;
4. Pankaj Tiwary, son of Sudama Tiwary;
5. Rupak Tiwary, son of Sudama Tiwary; all resident of Noniyad, P.O.- Baracharpa, P.S.- Madhupur, District- Deoghar, at present resident of Village- Pandeydih, Fatka Colliery, near Shiv Mandir, P.O. & P.S.- Nirsa, District- Dhanbad. Jharkhand.

….. Claimants / Respondents

6. Arun Kumar Sinha, son of Sri Bramdeo Prasad Sinha, resident of Gopalbad, P.O.- Gopalbad, P.S.- Sareia, District- Nalanda, at present resident of Sindri Colony, Nirsa Near BFW, P.O. & P.S.- Nirsa, Town- Dhanbad (owner of Tractor bearing No. BR-21C-6748).

… ... Respondents

CORAM : HON'BLE THE CHIEF JUSTICE

For the Appellant : Mr Manish Kumar, Advocate

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11 /Dated: 11.04.2026

I.A. No. 1042 of 2019

1. This I.A. seeks condonation of delay of 38 days in filing this appeal.

2. Upon perusing the cause shown, I am satisfied that the same is sufficient.

3. The delay is condoned and I.A. is disposed of.

M.A. No. 387 of 2017

4. Heard Mr Manish Kumar, learned counsel for the appellant.

5. This appeal challenges the Judgment and Award dated 25.02.2017 made in T (M.V.) Case No. 42 of 2012 by the Motor Accident Claims Tribunal at Dhanbad.

6. Mr Manish Kumar, learned counsel for the insurance company, submits that the insurance company raised a specific plea in the written statement that the driver of the insured vehicle, i.e., Haldal Bishal, held a

fake license. In support, documentary evidence in the form of a letter from the District Transport Officer, Patna and the Investigator's report were also produced and admitted in evidence. He submitted that the Tribunal did not consider this point or, in any event, considered it cursorily and refused to exonerate the insurance company.

7. Mr Manish Kumar submitted that driving of the insured vehicle by a driver who did not possess a license or a valid license amounts to a fundamental breach of the terms and conditions of the insurance policy and therefore, no liability could have been foisted upon the appellant insurance company in this matter. He pointed out that the driver was never impleaded in the claim petition and the owner, despite substituted service before the Tribunal and this Court, has not bothered to contest the proceedings.

8. For all the above reasons, Mr Manish Kumar submitted that the impugned award be interfered with and the liability foisted upon the appellant insurance company be set aside.

9. Considering the above contentions of Mr Manish Kumar, the impugned award and the record, which was called for in this matter, were perused.

10. The record shows that the driving license in the name of Haldal Bishsal, the driver of the insured vehicle, was produced on record.

11. Since the appellant insurance company claimed that the driving licence was fake, it was on the appellant Insurance Company to lead evidence to that effect. The onus of establishing fundamental breach of the terms of the insurance policy was on the appellant insurance company [see ***National Insurance Co. Ltd. v. Swaran Singh***, (2004) 3 SCC 297]. Further in the case of ***Narcinva V. Kamat & Anr. Vs Alfred Antonio Doe Martins And Ors*****, (1985) ACJ 397 (SC),** the Hon'ble Supreme Court

while reiterating that the onus of establishing fundamental breach of the terms of the insurance policy would lie on the insurance company which raises such a plea, 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. In this case, the insurance company has examined no witness. However, it has produced on record a letter from the District Transport Officer, Patna stating that the name of the driving license holder is one Anjani Bhushan. Similarly, a private investigator's report dated 27.10.2010 has also been produced to the same effect.

13. Admittedly, neither the private investigating officer nor the District Transport Officer, Patna, was examined in this matter. Therefore, based only on these two letters produced, it is difficult to accept that the burden has been validly discharged by the insurance company. The circumstance that the driver was not made a party to the claim petition or that the owner did not appear despite service cannot be sufficient to draw any adverse inference, much less to allow this appeal.

14. If the driver was not impleaded as a respondent, nothing prevented the appellant insurance company from seeking a summons to examine him in the context of their allegation that the driving license produced by such driver was fake. Similarly, as was held in ***Narcinva V. Kamat* (*supra*)**, the owner (insured) was not under an obligation to furnish evidence to enable the insurance company to wriggle out of its liability. For the above reasons, no case is made out to interfere with the impugned order, and the appeal is liable to be dismissed.

15. However, in this case, the Tribunal has awarded compensation of only Rs. 3,60,500/- with simple interest at the rate of 6% per annum from

the date of admission of the suit, i.e. 06.12.2013, till realisation. This compensation does not appear to be "just compensation".

16. Even though no cross-objection may have been preferred by the claimants, it is the duty of this Court to determine an award of "just compensation", as was held by the Hon'ble Supreme Court in the case of ***Surekha and Others v. Santosh and Others*, (2021) 16 SCC 467.**

17. Accordingly, Mr Manish Kumar was heard on the issue of quantum of compensation.

18. The Tribunal determined the income of the deceased, who operated a Kirana Shop, at Rs. 3000/- per month. However, it has not added anything for future prospects.

19. There is some controversy on whether the age of the deceased was 50 years as stated in the postmortem report or 54 years as was claimed by the claimants in her claim petition. In this case, the husband of the deceased has deposed in the matter that his wife was 54 years at the time of the accident. This evidence should have been preferred over the age mentioned in the postmortem report. Accordingly, the age of the deceased should be taken at 54 and not 50 as held by the Tribunal.

20. Considering the age of the deceased at 54, a 10% addition would be due towards future prospects, which means her income would be Rs. 3300/- per month, corresponding to Rs. 39600/- per annum.

21. Out of the above amount, a 25% deduction is due towards personal expenses. This means the yearly income for determining dependency will be taken at Rs. 29700/-. The multiplier, according to the decision in **Sarla Verma v. DTC, (2009) 6 SCC 121** and **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680,** would be 11 and not 13, as held by the Tribunal. The compensation towards dependency therefore comes to Rs.

3,26,700/-. Besides, the claimant shall be entitled to compensation of Rs. 40,000/- each towards loss of consortium i.e. Rs. 2,00,000/- in all. The claimants would also be entitled to Rs. 15,000/- towards funeral expenses and another Rs. 15,000/- towards loss of estate.

22. Thus, the total compensation would come to Rs. 5,56,700/-.

23. Thus, the insurance company's appeal is dismissed, but the compensation is enhanced from Rs. 3,60,500/- to Rs. 5,56,700/-. This amount shall carry interest at the rate of 6% per annum from the date of claim petition till its actual realisation and not just from the date of admission of the suit.

24. The appellant is directed to deposit the compensation amount together with interest as now determined in this Court within six weeks from today.

25. If any amounts have already been paid or deposited, the same can be adjusted while depositing the above-referred amount, after giving advance notice to the Member Secretary, JHALSA. Since the claimants have not appeared in the matter, JHALSA must take steps to contact the claimants and ensure they receive the deposited amount through regular banking channels at the earliest.

26. The appeal is disposed of in the above terms without any order for costs.

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

September 11, 2026
Ranjeet / R.Kr.
NAFR
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