IN THE HIGH COURT OF JHARKHAND AT RANCHI

M.A. No. 483 of 2016

Branch Managaer,, The New India Assurance Company Limited, Umorpar (512903), Banipur, Ghorsala, Umorpar, Dist- Mürshidabad (W.B.) Pin-742229,-Cum-Chandralok Complex, 2nd Floor, Ghantaghar, Bhagalpur, P.O., P.S.- & District-Bhagalpur, Bihar-812001 ... Appellant

Versus

1. Phulatan Bibi @ Nuresha Bibi wife of late Pir Ali Miya @ Mister Pir Ali Miya @ Chota Pir Mohammad Damiya @ Pir Mohammad Miya resident of village-Baskendri, P.S.-Maheshpur, P.O.- Maheshpur District-Pakur (Jharkhand)
2. Sri Umesh Kumar son of late Ramji Prasad Bhagat, resident of Village-Amrapara,, P.S.-Amrapara, P.O.-Amrapara District-Pakur (Jharkhand).
3. Jabbar Ansari son of late Pir Ali Miya @ Mister Pir Chota Pir Mohammad Damiya @ Pir Mohammad Miya resident of Village – Baskendri, P.S. - Maheshpur, P.O.- Maheshpur District-Pakur (Jharkhand)
4. Akhtar Ansari son of late Pir Ali Miya @ Mister Pir Chota Pir Mohammad Damiya @ Pir Mohammad Miya resident of village-Baskendri, P.S. - Maheshpur, P.O. - Maheshpur District-Pakur (Jharkhand) … Respondents

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CORAM: HON'BLE THE CHIEF JUSTICE

For Appellant: Mr Ganesh Chandra Jha, Advocate
For Respondents: Mr. Arvind Kumar Lall, Advocate
Md. Asadul Haque, Advocate
Mrs. D. Arati Kumari, Advocate.
Mr. Shivam Singh Kashyap, Advocate.
Mr. Gautam Kumar, Advocate.
Mr. Ashutosh Kumar Sinha, Advocate.

Reserved on: 11.09.2026 **Pronounced on: 18.09.2026**

1. Heard the learned counsel for the parties.

2. The appellant-Insurance Company challenges the judgment and Award dated 12.05.2016 passed by the District Judge-I-cum-Motor Vehicle Accident Claim Tribunal, Pakur, in M.A.C.T. Case No. 29 of 2014.

3. Mr Ganesh Chandra Jha, the learned counsel for the appellant submitted that the offending/insured vehicle was carrying passengers more than the permitted capacity at the time of the

accident. Besides, he also tried to suggest that the deceased was a mere gratuitous passenger in the insured vehicle. On these grounds, he submitted that there was a fundamental breach of the terms of the insurance policy, and therefore, no liability could have been foisted upon the appellant-Insurance Company. Without prejudice, he submitted that this was a fit case for making a “pay and recovery” order.

4. Mr Jha referred to the F.I.R. filed against the driver of the insured vehicle and submitted that it was evident from the F.I.R. that the insured vehicle was plying with passengers in excess of its permitted capacity. He submitted that, in M.A.C.T. matters, the F.I.R., which was produced by the claimants themselves, should have been treated as substantive evidence. Based on the same, he submitted that this was a fit case to absolve the appellant-Insurance Company or, in any event, to make a pay and recovery order.

5. Mr Arvind Kumar Lall, the learned counsel for the 1st respondent-claimant defended the impugned Award on the finding of liability of the appellant-Insurance Company. He submitted that no evidence was laid on behalf of the appellant-Insurance Company and that the burden squarely on the appellant-Insurance Company was never discharged. He, however, submitted that the compensation computed in the impugned Award was less than the “just compensation” payable to the claimants. He submitted that the Tribunal had failed to follow the law laid down by the Hon’ble Supreme Court

in ***Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121, National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680*** and ***Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130*****.**

6. Mr Arvind Kumar Lall also referred to some decisions of this Court and the decisions of the Hon'ble Supreme Court in the case of ***Nagappa v. Gurudayal Singh, (2003) 2 SCC 274*** and ***Surekha v. Santosh, (2021) 16 SCC 467*** to submit that the appellate Court is duty-bound to award enhanced compensation, if due, irrespective of the claimants filing any cross objections or cross appeal.

7. Mr Gautam Kumar, learned counsel for the 2nd respondent (owner of the insured vehicle) submitted that there was no fundamental breach of the terms of the insurance policy and the impugned Award, directing the appellant-Insurance Company to indemnify the 2nd respondent, was legal and valid.

8. Based on the rival contentions, the following points arise for determination: -

   (i) Whether the appellant-Insurance Company was liable to be absolved of its liability to pay any compensation on account of the alleged breach of the terms of the insurance policy?

   (ii) In any event, whether, in the facts and circumstances of the present case, the appellant-Insurance Company was entitled to a "pay and recovery order" enabling it to recover the

compensation amount payable to the claimant from the owner of the insured vehicle?

(iii) Whether the compensation determined by the Tribunal represents “just compensation” and if not, whether the appeal Court can award the same without the claimant filing any Cross appeal or Cross objection?

9. Insofar as the first and second points for determination are concerned, it is necessary to note that the appellant-Insurance Company, after raising the defence that it should be absolved of its liability on account of a fundamental breach of the terms of the insurance policy, has failed to lead any cogent evidence to establish the precise terms of the insurance policy and to support its contention that the insured vehicle was carrying passengers over and above its permitted capacity.

10. In **National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297**, the Hon’ble Supreme Court held that the burden of establishing a fundamental breach of the terms and conditions of the insurance policy lies with the insurance company that raises such a plea. The insurer, therefore, cannot succeed merely by pleading a breach; it must establish the same by evidence.

11. The same principle finds expression in **Narcinva V. Kamat v. Alfredo Antonio Doe Martins, 1985 ACJ 397 (SC)**, wherein the Hon’ble Supreme Court, while reiterating that the burden of proving breach of the terms of the insurance policy lies upon the

insurance company, held that the insured is not required to adduce evidence merely to enable the insurer to wriggle out of its statutory liability.

12. Thus, the legal position is well-settled that the burden of establishing breach of the terms of the insurance policy is squarely upon the insurance company raising such a plea.

13. In this case, the appellant-Insurance Company did not examine any witnesses in support of its plea. Some documents were produced on record, though not in accordance with law. Even if some liberality is adopted in procedure before the Claims Tribunal, the documents produced were only the R.C. Book, the Insurance policy, and some such documents.

14. Based upon the same, no case was established about any breach or fundamental breach of the terms of the insurance policy.

15. Mr Jha, the learned counsel for the appellant, however, placed strong reliance on the F.I.R. (Exhibit-1) produced on record by the claimant in this matter.

16. He submitted that since the F.I.R. refers to the insured vehicle having more passengers than its permitted capacity, the insurance company has discharged the burden of establishing a fundamental breach of the terms of the Insurance policy.

17. In such matters, merely because the F.I.R. is also admitted as one of the documents for establishing negligence of the Driver of the insured vehicle, it is not as if all the contents of the F.I.R. can be taken as proved or established. Further, when the

claimant has examined an eyewitness (C.W.-2), his testimony must be preferred over an unverified reference in the F.I.R.

18. C.W.-2 has also deposed that the deceased, Pir Ali Miya, was not a passenger in the insured vehicle bearing Registration No. JH-04C/3223 but instead, he deposed that the deceased was travelling by vehicle bearing registration No. JH-16A/6790. Because the tyre of the vehicle in which the deceased was travelling suffered a puncture, the deceased alighted near Mandro village and was looking out for a mechanic. At that time, the insured vehicle, which was being driven at a high speed and in a rash and negligent manner, knocked down the deceased and another person who was standing by the roadside. This evidence, which has withstood cross-examination, was correctly preferred by the Tribunal over some unverified observations in the F.I.R.

19. Even otherwise, it is well-settled that the contents of the F.I.R. do not constitute substantive evidence **(See : Hasib v. State of Bihar, (1972) 4 SCC 773).** For some limited purposes, the contents of the F.I.R. may be investigated. However, the contents of the F.I.R. cannot be the sole basis to conclude breach of the terms of the Insurance policy.

20. The claimant's (C.W.-1) testimony must also be harmonised with the testimony of C.W.-2, the eyewitness to the accident. Admittedly, C.W.-1 did not witness the accident. C.W.-2, who witnessed the accident, clearly deposed that the deceased was travelling in another vehicle and, when the tyre of that vehicle

was punctured, alighted from it and looked for a mechanic. He has deposed that it is at this stage that the insured vehicle, which was being driven in a rash and negligent manner, knocked the deceased down. There is no independent testimony to establish the alleged breach.

21. Accordingly, based on the evidence on record, no case is made out to conclude that there was any breach of the terms and conditions of the insurance policy. The appellant-Insurance Company can therefore neither be absolved of its liability to pay nor is this a fit case to make a “pay and recovery order”.

22. Point Nos. 1 and 2 are answered in the above terms.

23. Insofar as point No. 3 is concerned, it is well settled that the Tribunal must award just compensation irrespective of whether the claimants have claimed it **[see Nagappa (supra)]**. Similarly, in **Surekha (supra)** the Hon’ble Supreme Court has held that the appellate court, when considering an appeal arising out of a motor accident claim, is duty-bound to ensure that the claimant receives just compensation even though such claimant has not filed any formal appeal or cross-objection.

24. Therefore, the absence of a cross-appeal or cross-objection cannot preclude this Court from determining and awarding just compensation if the same is found to be due to the claimant.

25. In this case, the claimant had deposed that her deceased husband was working as a *Khalasi* on vehicle No. JH-16A/6790 and earning Rs. 6,000/- per month. An income certificate (Exhibit-11) is also produced on record showing that the

deceased was earning a monthly salary of Rs. 6,000/- in addition to a daily food allowance of Rs. 100/-.

26. The Tribunal, however, ignored the claimant's oral testimony and the documents produced at Exhibit-11; instead, without assigning any reason, it determined the deceased's monthly salary at Rs. 4628/-. It is possible that the Tribunal had in mind some notification under the Minimum Wages Act; however, there is no such reference in the impugned award. The accident in which the claimant's husband expired took place on 29.12.2013. There was nothing unreasonable in the claimant's version that her deceased husband was employed as a *Khalasi* and was earning Rs. 6,000/- per month, which translates into roughly Rs. 200/- per day. The food allowance which the deceased was earning cannot be considered. The claimant's oral evidence was untested in cross-examination and is also supported by the salary certificate she produced.

27. Accordingly, the Tribunal, without assigning any reasons, was not justified in determining the deceased's monthly income at Rs. 4,628/- instead of Rs. 6,000/-. The annual income of the deceased should therefore have been determined at Rs. 72,000/-.

28. The evidence on record shows that the deceased was 54 years old at the time of the accident/demise therein. Therefore, in terms of **Pranay Sethi (supra)** an addition of 10% towards future prospects was warranted. This means the annual salary of the deceased would have to be determined at Rs. 79,200/-.

29. The deceased has left behind his widow-claimant and two sons who are impleaded as respondents to the claim petition. Therefore, this is not a case where the deceased was a bachelor and therefore should be presumed to be spending 50% of his income on himself. A deduction of 1/3rd, however, will have to be made from the deceased's annual income. After this deduction, the deceased's annual income will be taken at Rs. 52,800/-.

30. The multiplier in this case, following the law laid down in **Sarla Verma (Supra),** would be 11. The compensation towards dependency would therefore have to be determined at Rs. 5,80,800/-.

31. The claimant is further entitled to Rs. 40,000/- towards consortium, Rs. 15,000/- towards funeral expenses, and a further Rs. 15,000/- towards loss of estate. Thus, the total compensation would have to be determined as Rs. 6,50,800/- to qualify as "just compensation". Besides, as held by the Tribunal, the compensation amount will have to be paid with interest at the rate of 6% per annum from the date of the claim petition till its actual realisation. No doubt, necessary adjustment will have to be made towards the amounts already paid, including the statutory deposit, if any, in this appeal.

32. The appeal is accordingly disposed of by rejecting the appellant's contentions but by enhancing the compensation amount from Rs. 4,13,264/- to Rs. 6,50,800/- together with interest at the rate of 6% per annum from the date of the claim

petition till actual realisation of this amount, after making adjustments/deduction as indicated above.

33. The appellant-Insurance Company is directed to deposit the above-referred compensation amount, after making the adjustments, within eight weeks from today, after giving due intimation to the learned counsel for the claimant.

34. The claimant may withdraw the compensation amount by furnishing identity and bank details so that the amount can be directly transferred to the claimant's bank account. Under no circumstances should any withdrawal other than through regular banking channels be permitted by the Registry.

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

36. Pending Interlocutory Applications, if any, will not survive and are disposed of.

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

September 18, 2026
N.A.F.R.
APK/VK
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