IN THE HIGH COURT OF JHARKHAND AT RANCHI

M.A. No. 406 of 2017

National Insurance Company Limited, Gaya Branch, P.O. & P.S District-Gaya (Bihar) through Assistant Manager, Jharkhand Legal Cell, Office at Kachahri Road Beside Gopal Complex, Ranchi, P.O.-G.P.O, P.S.-Kotwali, District-Ranchi, (Jharkhand)

... Opposite Party No.3/Appellant.

Versus

1. Smt. Baso Devi, wife of Late Dewa Bhuia
2. Radha Kumari, D/o Late Dewa Bhuia
3. Raghu Bhuia, S/o Late Dewa Bhuia
4. Rabri Kumari, D/o Late Dewa Bhuia

   Respondent No.2 to 4 are the minors son and daughters of the deceased they are represented by their mother respondent no.1.

   All at present residing at Bihar Dhaura, Pandeydih, P.S.-Tetulmari and P.O.-Sijua (Chandour), District-Dhanbad (Jharkhand)

….. Claimants/Respondents

5. SafiK Khan s/o Abdul Gani Khan resident of village-Babubigha, P.O.-Bishnupur, P.S-Bodhgaya, District – Gaya (Bihar) (Owner of the offending Truck)

…… Opp. Party no.1/Respondent

6. Samid Khan, son of Safik Khan resident of village & P.O – Khandel, P.S.- Sherghati, Dist.- Gaya (Bihar) (Driver of the offending truck)

…… Opp. Party no.2/Respondent

CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mr Amaresh Kumar, Advocate
For the Claimants: Mr Ashish Kumar, Advocate

08/Dated: 18.09.2026

1. Heard Mr Amaresh Kumar, learned counsel for the appellant-Insurance Company, and Mr Ashish Kumar, learned counsel for the respondents-claimants.

2. This appeal challenges the judgment and award dated 17th of February 2017 in Motor Accident Claim Case No. 103 of 2011 passed by the Motor Accident Claims Tribunal at Dhanbad.

3. Mr Amaresh Kumar submitted that the insured vehicle was being driven by a driver who had no valid licence and the vehicle had no route permit. He submitted that this amounts to a fundamental breach of the terms of the insurance policy and therefore, the appellant-Insurance Company should be absolved of the liability to indemnify the owner or, in any event, a pay and recover order should have been made. He relied on **Pappu v. Vinod Kumar Lamba,** (2018) 3 SCC 208**,** and **Amrit Paul Singh v. Tata AIG General Insurance Co. Ltd.,** (2018) 7 SCC 558, in support of his submissions.

4. Mr Amaresh Kumar further submitted that the compensation of Rs. 50,000/- for loss of guidance and care should not have been granted, particularly since Rs. 1,00,000/- had already been awarded towards loss of consortium.

5. Insofar as the first point raised by Mr Amaresh Kumar is concerned, reference is made to the written statement filed on behalf of the appellant-Insurance Company. Nowhere in the written statement has the appellant pleaded that the driver of the insured vehicle had no licence or that the vehicle had no route permit to ply.

6. In paragraph 5, the appellant-Insurance Company (Defendant No.3 before the Tribunal) vaguely states that it is entitled to protection

from liability, if any, for violation of the terms and breach of conditions as contemplated in several clauses and sub-clauses of Section 149 as well as 147. In paragraphs 10 and 11, there is a general statement that the first defendant must be called upon to produce the driving licence and a permit.

7. The above pleadings do not amount to any specific plea that the driver of the insured vehicle had no licence or that the vehicle was plying without a permit.

8. Due to the absence of pleadings, the Tribunal framed no issue on the plea now advanced in appeal, nor did the appellant-Insurance Company apply for recasting of the issues. On behalf of the appellant-Insurance Company, no oral or documentary evidence was led to produce the insurance policy or otherwise establish any breach of its terms and conditions.

9. In the case of **Narcinva V. Kamat v. Alfredo Antonio Doe Martins**, (1985) 2 SCC 574, the Hon'ble Supreme Court, in paragraph 12, rejected a similar contention raised on behalf of the Insurance Company after holding that if a breach of a term of the contract permits a party to the contract not to perform the contract, the burden is squarely on that party which complains of breach to prove that the breach has been committed by the other party to the contract. The test in such a situation would be who would fail if no evidence is led.

10. The Hon'ble Supreme Court noted that the Tribunal had correctly cast the burden of proof on the Insurance Company, and not an iota

of evidence had been led by the Insurance Company to show that the driver did not have a valid driving licence to drive the vehicle.

11. The Hon'ble Supreme Court, in paragraph 14, further held that the burden of proving a breach of the insurance contract was squarely on the insurance company. It could not be said to have been discharged by it by a mere question in cross-examination. The Hon'ble Supreme Court ruled that the driver or the owner was under no obligation to furnish evidence to enable the insurance company to wriggle out of its liability under a contract of insurance. Further, the Hon'ble Supreme Court noted that the RTA which issues the driving licence keeps a record of the licences issued and renewed by it. The insurance company could have produced evidence to substantiate its allegation. Applying the test of who would fail if no evidence were led, the Hon'ble Supreme Court observed that it was obvious that the insurance company's plea should fail.

12. In **Amrit Paul Singh** (supra), not only did the insurance company take a clear plea in the pleadings, but the materials on record also established that the insured vehicle did not have a permit at the time of the accident. Therefore, the Hon'ble Supreme Court held that the principle in **National Insurance Co. Ltd. v. Swaran Singh,** (2004) 3 SCC 297, would not apply.

13. In **Swaran Singh** (supra), the Hon'ble Supreme Court held that the burden of establishing a breach of the terms of the insurance policy lies with the insurance company that raises such a plea.

14. Similarly, in the case of **Pappu v. Vinod Kumar Lamba** (supra), firstly, there were clear pleadings denying that the driver of the insured vehicle had no licence and secondly, despite such a plea, the owner or the driver failed to specifically plead and then prove that the driver indeed had a valid driving licence. As noted earlier, the pleadings on behalf of the appellant-Insurance Company are extremely sketchy and do not amount to raising a specific plea that the driver of the insured vehicle had no licence.

15. Accordingly, for the above reasons, Mr Amaresh Singh's first contention is rejected.

16. So far as Mr Amaresh Singh's second contention is concerned, considering the law laid down in **Sarla Verma v. DTC,** (2009) 6 SCC 121**,** and **National Insurance Co. Ltd. v. Pranay Sethi,** (2017) 16 SCC 680, compensation of Rs. 50,000/- should not have been granted for loss of guidance and care. However, after deducting that amount of Rs. 50,000/-, in terms of the law laid down in **Magma General Insurance Co. Ltd. v. Nanu Ram,** (2018) 18 SCC 130, compensation of Rs. 40,000/- towards loss of consortium should have been awarded in favour of each of the four claimants. Thus, the total compensation towards loss of consortium would come to Rs. 1,60,000/- and not merely Rs. 1,00,000/-, as has been awarded by the Tribunal.

17. Similarly, the Tribunal should have awarded Rs. 15,000/- and not merely Rs. 10,000/- towards funeral expenses and a further amount of Rs. 15,000/- towards loss of estate, which it has failed to do.

18. Thus, even after deducting Rs. 50,000/- towards loss of guidance and care, the total compensation amount awarded by the Tribunal would remain the same.

19. Accordingly, the appeal is disposed of by not interfering with the compensation amount determined by the Tribunal and rejecting the appellant's contention that it ought to have been absolved of liability or that, at the very least, a pay and recovery order should have been made in this matter.

20. Mr Amaresh Kumar states that an amount of ₹6,00,000/- has been paid to the claimants. Therefore, the balance amount, together with interest, must now be deposited in this Court within eight weeks from today, after due intimation to the learned counsel for the claimants.

21. The appellant-Insurance Company must deposit the enhanced compensation amount, together with interest, after deducting the payments already made and the statutory amount already deposited, within eight weeks from today, after due intimation to the learned counsel for the claimants.

22. Once the amount is deposited, the Registry is directed to permit the claimants to withdraw it by transferring it into their bank accounts. Under no circumstances should the transfers be otherwise than through regular banking channels.

23. The learned counsel for the claimants has agreed to provide their identity and bank details so that the transfer of the compensation can be effected at the earliest.

24. The appellant shall be entitled to adjust the security deposit amount.

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

26. IAs, if any, pending in this matter will not survive and are disposed of.

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

September 18th, 2026

N.A.F.R.

Manoj/Sharda/Cp.2

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