IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 392 of 2018

Iffco Tokio General Insurance Co. Ltd., S-8, 2nd Floor, Bumbra Enclave, Bistupur, Diamond Road, Jamshedpur, East Singhbhum, having its office at 42A, Shakespeare Sarani, 3rd Floor, Flat No. 3A, Express Tower, P.O. Shakespeare Sarani, P.S. Shakespeare Sarani, Kolkata through its Vice President cum Head Customer Service Centre Sri Saikat Sarkar s/o Late A.N Sarkar, resident of 47/2, Ram Krishna Ghosh Road, P.O. South Sinthee, P.S. Baranagar, Dist. North 24 Parganas.

..... … Appellant

Versus

1. Mosomat Babita w/o Late Vijay Kumar Yadav @ Vijay Yadav
2. Kanchan Kumari (minor) d/o Late Vijay Kumar Yadav,
3. Manita Kumari (minor) d/o Late Vijay Kumar Yadav.
4. Laxman Yadav (minor) s/o Late Vijay Kumar Yadav,
5. Jagdish Yadav s/o Late Shiba Mahto. (Deleted)
6. Kesiya Devi w/o Jagdish Yadav,

Nos. 2 to 4 are minors and are being represented through their mother and natural guardian, respondent no. 1 who has no adverse interest against them.

All r/o Village Birsodih, P.O. Gumo, Barwaidh, P.S. Jainagar, Dist. Koderma.

7. Binod Yadav s/o Sri Sideshwar Yadav, r/o Village Pachmadhar, P.O., P.S. Barhi, Dist. Hazaribagh.

..... … Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant : Mr. Ashutosh Anand, Advocate.
For Resps.-Claimants : Mr. Prabhat Kumar Singh, Advocate.

For the Resp. No. 7 : Mr. Pradip Kumar Prasad, Advocate.

15/ 28.09.2026 Heard Mr. Ashutosh Anand, learned counsel appearing for the appellant, Mr. Prabhat Kumar Sinha, learned counsel appearing for the claimants (respondent Nos. 1 to 6) and Mr. Pradip Kumar Prasad, learned counsel appearing for the respondent No. 7.

2. This appeal has been preferred under Section 30(1) of the Employees Compensation Act, 1923 being aggrieved and dissatisfied with the award dated 17.04.2018, passed by the learned Presiding Officer, Labour Court-cum-Employees Compensation Commissioner, Hazaribagh in W.C. Case No. 52 of 2012.

3. Mr. Ashutosh Anand, learned counsel appearing for the appellant insurance company submits that the claimants have filed W.C. Case No. 52 of 2012 alleging therein that Vijay Kumar Yadav @ Vijay Yadav was employed as operator in Tata Hitachi Ex-210 (Excavator) and on 13.01.2012, due to motor vehicle accident during his employment, the death has occurred of the deceased. He next submits that during the operation of the equipment, the equipment slipped from slape and resulting into failing accident and thereby causing his death. He further submits that the said excavator was being run under M/s Ramky Infrastructure under a contractor and the said accident took place at NRL petrol pump, Shanbanglow, P.S. Nongph, District Ri-bhoi in the State of Meghalaya. He also submits that after accident, UD Case No. 3/12 was registered on the basis of written application of Aditya Rana, Maintenance Supervisor working under contractor Parmod Yadav. He then submits that the post-mortem was also conducted on the dead body of the deceased. He further submits that the claimants have claimed that the dependents of the deceased being wife, minor children and parents of the deceased and the monthly wage of the deceased was Rs. 16000/- and further the deceased was 33 years old. On these grounds, the learned Labour Commissioner has allowed the claim case

and passed an award directing the insurance company to pay the compensation of Rs. 8,06,640/- with the interest @ 12% from the date of filing of the claim application till the date of its realization.

4. Learned counsel appearing for the appellant-insurance company submits that the learned Labour court has failed to consider the said policy was special contingent policy and the driver / operator was not covered under the said policy and by the said excluded part, the driver/operator was not covered by the said insurance policy. He next submits that the learned labour court has wrongly held that the O.P. No. 2 has not adduced any evidence either oral or documentary.

5. Learned counsel has relied in the case of ***IFFCO TOKIO General Insurance Co. Ltd. Kolkata Versus Gita Devi & Ors***. in **M.A. No. 144 of 2013**. On these grounds, he submits that the award may kindly be set aside and this appeal may kindly be allowed.

6. On the other hand, Mr. Prabhat Kumar Sinha, learned counsel appearing for the claimants has opposed the prayer and submits that third party liability is covered under the said insurance policy and in view of that argument of learned counsel appearing for the appellant is not tenable and this aspect of the matter has earlier been considered by the Division Bench of this court in the case of ***National Insurance Company Ltd., Dhanbad Versus Jayanti Devi & Ors.,*** reported in **2009 SCC OnLine Jhr 1624**, where in para-13, the Division Bench stipulates as under:-

> *"13. As noticed above, it is mandatory requirement of law that policy of insurance must cover the risk of third party passengers, driver and conductor in respect of liability arising out of Workmen's Compensation Act. If the owner insured gives a proposal for covering liability of other employees, then separate premium has to be paid in order to make Insurance Company liable in respect of death or bodily injury arising out of and in*

> *course of employment and additional premium has to be paid. In the instant case, from perusal of schedule of premium paid by the owner, relevant portion of which has been quoted herein before, it is evidently clear that for covering risk of one employee under Workmen's Compensation Act, a premium of Rs. 25/- was paid. The contention of the learned counsel appearing for the Insurance Company that separate premium of Rs. 25/- was paid for covering risk of driver, cannot be accepted for the reason that no additional premium is to be paid for covering risk of driver of the vehicle. It is only for the employees engaged by the insured, a separate premium has to be paid so that in case of death or bodily injury arising out of and in course of employment, Insurance Company will pay the compensation amount."*

7. Relying on the above judgment, he submits that third party covers the driver and in view of that the learned labour court has rightly passed the award.

8. Learned counsel further submits that so far the reliance placed by the learned counsel appearing for the appellant in M.A. No. 144 of 2013 is concerned, the division bench judgment has not been considered in the said case. He also submits that on the same line, further judgment is there in the case of ***Ramashray Singh Versus New India Assurance Co. Ltd. & Ors.*** reported in **(2003) 10 SCC 664**, wherein the Hon'ble Supreme Court in paras-8, 10 and 11, has held as follows:-

> *"8. Over and above the risks which are covered by this statutory provision, parties may of course enter into a contract by which the insurer agrees to cover additional risks. It is not the appellant's case that apart from the policy of insurance there was any contract between the appellant and the insurance company. The policy has a clause which*

defines the limits of liability in respect of death or bodily injury to any person caused by or arising out of the use of the motor vehicle under Section II(i) of the terms and conditions of the Policy. In proviso (b) to Section II (1), it has been expressly stated that

"Except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment"

10. The appellant's first submission was that Shashi Bhushan Singh was a passenger. The appellant's submission that the phrases 'any person' and "any passenger" in clauses (i) and (ii) of sub section (b) to Section 147(1) are of wide amplitude, is correct. [See: New India Assurance Company V. Satpal Singh and Others 2000 (1) SCC 237]. However, the proviso to the sub-section carves out an exception in respect of one class of persons and passengers, namely, employees of the insured. In other words, if the "person" or "passenger" is an employee, then the insurer is required under the statute to cover only certain employees. As stated earlier, this would still allow the insured to enter into an agreement to cover other employees, but under the proviso to Section 147 (1)(b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of the death arising out of and in the course of any employment of the person insured unless: first : the liability of the insured arises under the Workmen's Compensation Act, 1923 and second : if the employee is engaged in driving the vehicle and if it is a public service vehicle, is engaged as conductor of the vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of "any person" or "passenger". If this were permissible, then there would be no

> *need to make special provisions for employees of the insured. The mere mention of the word "cleaner" while describing the seating capacity of the vehicle does not mean that the cleaner was therefore a passenger. Besides the claim of the deceased employee was adjudicated upon by the Workmen's Compensation Court which could have assumed jurisdiction and passed an order directing compensation only on the basis that the deceased was an employee. This order cannot now be enforced on the basis that the deceased was a passenger.*
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> *11. The decision of the Full Bench of the Kerala High Court relied on by the appellant National Insurance Co. Ltd. v. Philomena Mathew : 1993 ACJ 1116 was based on a construction of Section 95 of the Motor Vehicles Act, 1939 the corresponding section to which under the present Act is section 147. The relevant provisions of the two sections which are otherwise in pari materia are materially different in one respect. Section 95 covered a fourth category of employee after the three now mentioned in clauses (a)(b) and (c) to the proviso to Section 147 (1)(b) viz.,:*
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> *"where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event, out of which a claim arises".*
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> (emphasis supplied)

9. Relying on the above judgment, he further submits that the learned labour court has rightly held that any person is covered under third party insurance and the learned labour court has rightly passed the award. He also submits that the claimants have already received the awarded amount to the tune of Rs. 8,066,40/-, however, interest has not been received as yet. On these grounds, he submits that that this appeal

may kindly be dismissed.

10. In reply, Mr. Ashutosh Anand, learned counsel appearing for the appellant submits that the judgment, on which, reliance has been placed by the learned counsel of respondents that is relating with the Motor Vehicle Act, 1988.

11. In view of the above submissions of learned counsel appearing for the parties, the court has gone through the materials available on record. It is an admitted position that the operator has died in the accident of the said excavator was covered under the policy of the appellant. The coverage as per contractor's plant and machinery includes following:-

(a) Third party liability upto Rs. 25,00,000/-
(b) Owner surrounding property
(c) Earthquake
(d) Theft covered in basic CPM policy
(e) Airfreight up to Rs. 200000/-
(f) Deletion of warranty K-allowing underground operation
(g) Floater

And for the said policy, premium calculation is as under:-

1. Premium calculation:-

Sum insured	*: 4,162,261/-*
Rate 0.87%	*: 36,212/-*
S. tax 10.3%	*: 3730/-*
Total	*: 39,942/-*

12. From the above column of the extension, it is crystal clear that under the third party liability, the payment has been made.

13. Exclusion under the TPL Extension is also the part of the said policy, which reads as under:-

Exclusion under the TPL Extension

The Company will not indemnify the insured, under this extension in respect of

a) The first amount of policy excess of each claim for any one occurrence related to property damage.

b) Expenditure incurred in doing or redoing or making good or repairing or replacing any thing covered or coverable under the policy.

c) Liability consequent upon
I. bodily injury to or illness of employees/workmen/members of the families of the insured or of the owners of the works/ site/ premises location or of any other firm/contractors connected with any other work at the works/site/premises/ location.
II. loss of or damage or property belonging to or held in trust by or under custody of the owner of the works/site/ premises/location of any other firms/contractors or any employee/workmen/family members of any of the aforesaid.
III. any accident cost by vehicles licensed for general road or by waterborne vessels or used aircraft.
IV. any agreement by the insured to pay any sum by way of indemnity or otherwise unless such liability work have attached also in the absence of such agreement."

14. If the excavator is being utilized for any construction work, it is required to move from one place to another and if the vehicle is fit and suitable for being used on a road, it is immaterial whether it runs on a private road or on a public road unless it is shown that it is of a special type adapted for use only in factories or enclosed premises and incapable of running on any other type of roads or public roads. An excavator is clearly not such a vehicle which can be said to be incapable of running on roads, public or private.

15. Sub-section (28) of Section 2 of the Motor Vehicles Act, 1988 reads as under:

"2(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a

> *special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimetres].”*

16. Sub-section (21) of Section 2 of the Motor Vehicles Act, 1988 reads as under:

> *“2(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 1[7500] kilograms.”*

17. Admittedly, the vehicle in question is an excavator. Sub-section (21) of Section 2 of the Act, 1988 defines light motor vehicle which includes excavator. Thus, excavator is coming within the meaning of light motor vehicles.

18. In view of the above, it is crystal clear that the operator of the vehicle in question is coming within the coverage of third party insurance, as has been held by the Division Bench of this court in the case of ***National Insurance Company Ltd., Dhanbad Versus Jayanti Devi & Ors. (Supra)*** as well as in the case of ***Ramashray Singh (Supra)***, on which, the reliance has been placed by the learned counsel appearing for the claimants. Further the case relied by the learned counsel appearing for the appellant in M.A. No. 144 of 2013 is concerned, in that judgment, abovementioned two judgments have not been considered.

19. It appears that the learned labour court has taken much efforts in writing the said award in his own handwriting and had read all the documents and had held in para-8 of the said award that the O.Ps have not adduced evidence either oral or documentary, however, in the later part of the award, the learned labour court has considered the said insurance policy, as such, argument of Mr. Anand, learned counsel

appearing for the appellant with regard to referring para-8 of the award is not helping the appellant herein.

20. The Workmen Compensation Act is a welfare piece of legislation, which further requires to give the liberal meaning of compensation in light of the several judgments of the Hon'ble Supreme Court as well as of this court.

21. In view of the above facts, reasons and analysis, this court finds that there is no illegality in the impugned award of the learned labour court. As such, this appeal is hereby, dismissed.

22. Any amount lying with the learned labour court in lieu of interest in view of the impugned award shall be released in favour of the claimants, if not disbursed as yet.

23. Let the Trial Court Records be sent back to the learned court forthwith.

(Sanjay Kumar Dwivedi, J.)

Dated:-28.09.2026

Amitesh/- **[A.F.R.]**