IN THE HIGH COURT OF JHARKHAND AT RANCHI

Miscellaneous Appeal No. 213 of 2017

Divisional Manager, M/S the New India Assurance Company Limited, B.P. Agarwala Building, P.O. & P.S. Dhansar, District- Dhanbad represented through its Divisional Office No. 1, P.P. Compound, P.O. Ranchi, P.S. Chutia, District- Ranchi.

….. Appellant

Versus

1. Chetlal Thakur, Son of Late Motilal Thakur.
2. Sandeep Thakur, Son of Chetlal Thakur.
   Respondent No. 2 being minor is represented through his father and natural guardian Sri Chetlal Thakur.
   Both resident of Lohidih, P.O. Nagari, P.S. Nimiaghat, District- Giridih.
3. (i) Sriniwas Tiwary
   (ii) Ganesh Tiwary
   (iii) Subhash Tiwary
   All sons of late Hari Prasad Tiwari,
   All R/o Dhabachit More, Near Shiv Mandir, P.O. & P.S. Rajganj, Dist. Dhanbad (Owner of the Truck No. BPW-0455)

... ... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mr Manish Kumar, Advocate
For Resp. Nos. 1-2: Mr Shekhar Prasad Sinha, Advocate
For Resp. Nos. 3(i)-(iii): Mr Praveen Kumar Pandey, Advocate
Mr Rajesh Kumar Mishra, Advocate
Mr Pawan Kumar Chaudhary, Advocate
Mr Pradeep Kumar Nayak, Advocate

10/Dated: 30.10.2026

1. Heard Mr Manish Kumar, learned counsel for the appellant, Mr Shekhar Prasad Sinha, learned counsel for respondent Nos. 1 and 2 (claimants), and Mr Pradeep Kumar Nayak, learned counsel for respondent Nos. 3(i) to 3(iii) (owners of the insured vehicle).

2. The appellant-Insurance Company challenges the impugned Award dated 07.01.2017 in Title (MV) Suit No. 174 of 2010,

passed by the District Judge-XIII-cum-Motor Vehicle Accident Claim Tribunal at Dhanbad, to the limited extent that a pay and recovery order should have been made in this matter.

3. The appellant-Insurance Company raised a specific plea that the insured vehicle was driven without a valid permit and that this constituted a breach of the terms of the insurance policy as well as a statutory breach under the Motor Vehicles Act, 1988.

4. On behalf of the owner, a temporary permit was produced in evidence. The same was not marked in evidence for want of proof.

5. Further, the Tribunal recorded that although the temporary permit referred to the registration number of the offending vehicle, the permit number was 20789 of 2005. On verification, the Tribunal found that this permit related to some other vehicle bearing registration No. JH-02C-6753 and not to the offending vehicle bearing registration No. BPW-0455. A finding to this effect is recorded in paragraph 14 of the impugned Award.

6. In paragraph 15, the Tribunal, relying upon the decision of the Gauhati High Court in the case of ***New India Assurance Co. Ltd. Vs. Rina Kumal and another, (2014) 3 Gauhati Law Reports 32*****,** which decision, even today, was relied upon by the learned counsel for the owner, held that the claim of the 3rd party cannot be defeated merely because the offending vehicle was being plied without a valid permit. In such a situation, the Tribunal should make a pay-and-recover order upon ascertaining that there was indeed a violation of the terms and conditions of the Insurance Policy.

7. The Tribunal has, in fact, accepted the case of the appellant-Insurance Company; however, in the operative portion, the Tribunal has held that the Insurance Company must pay the compensation amount to the claimants and, if it is able to establish breach of any of the terms of the insurance policy, then, to recover this compensation amount from the owners.

8. Mr Manish Kumar submitted that the breach had already been established and accepted by the Tribunal in the impugned order. In such circumstances, he submitted that there was no need for the appellant-Insurance Company to re-establish the breach to recover the compensation amount from the owners. He further submitted that the Tribunal had not specified where the Insurance Company was now required to establish this breach. He also submitted that the Tribunal had not specified before which authority the appellant-Insurance Company was now expected to establish the breach.

9. The learned counsel for the owner tried to submit that respondent Nos. 3(i) to 3(iii) were the legal representatives of the original owner of the insured vehicle. He submitted that these respondents have not inherited anything from the owner of the insured vehicle and therefore, no pay and recovery order can be made against them.

10. The above contention cannot be adjudicated at this stage, and if at all any execution proceedings are filed by the appellant-Insurance Company for recovery of the compensation amount against these respondents, it will be open to the said

respondents to raise and establish this plea by leading proper evidence.

11. However, based on the material on record as well as the findings recorded in the impugned Award itself, which findings have not even been challenged by respondent Nos. 3(i) to 3(iii), the impugned Award is modified, and it is declared that once the compensation amount is paid by the Insurance Company to the claimants, the Insurance Company would be entitled to recover the same from the owners.

12. However, the defence of respondent Nos. 3(i) to 3(iii) not being liable because they have not inherited anything from the original owner or that their liability should be restricted only to the extent of what they may have inherited from the original owner is kept expressly open to be raised and established in any execution proceedings that the appellant-Insurance Company may choose to initiate.

13. The impugned Award is modified to the above extent. The appeal is partly allowed. No order for costs. Pending Interlocutory Applications, if any, do not survive and are disposed of.

14. Mr Manish Kumar states that Rs. 9,00,000/- has already been paid to the claimants. The balance amount must be paid to the claimants by depositing it with this Court, after adjusting the statutory deposit, within two months from today, after giving due intimation to the learned counsel for the claimants. Once this amount is deposited, the claimants shall be entitled to withdraw

it by providing identity and bank details to the Registry, which shall thereupon transfer the amount into their bank accounts.

15. Under no circumstances should the amount be transferred other than through normal banking channels.

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

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

October 30, 2026
N.A.F.R.
APK/VK
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