**IN THE HIGH COURT OF JHARKHAND AT RANCHI**
**M.A. No. 88 of 2017**

The Branch Manager, National Insurance Company Limited, Verma Mention, Bank More, P.O. Dhanbad, P.S. Bank More, District Dhanbad 826001, through its legal cell, Ranchi, P.O. GPO, P.S. Kotwali, District Ranchi (Insurer of the Truck Registration No. BIR 9131)
Policy No. 170300/31/12/6700001816)

… ...Appellant/Defendant No.2/Opp. Party No. 2

Versus

1. Raj Kumar Rawani @ Raju Rawani, Son of Pradip Rawani, resident of Khash Pargha, Musla Kulhi, P.S. Baliapur, P.O. Baliapur, P.S. Govindpur, District Dhanbad

… … Respondent/Applicant/Plaintiff

2. Ajay Jain, son of Sri Jaipal Jain, resident of At Rajbari Road, Jharia, P.O. & P.S. Jharia, District Dhanbad 828111
(owner of Truck No. BIR 9131)

... Respondent/Defendant No. 1/Opp. Party No. 1

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**CORAM: HON'BLE THE CHIEF JUSTICE**

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For the Appellant: Mr Manish Kumar, Advocate
For the Claimant: Mr Ishan Ashish, Advocate

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**12 / Dated: 11.09.2026**

**1.** Heard Mr Manish Kumar for the Appellant and Mr Ishan Ashish for the Respondent-claimant.

**2.** The record shows that the Insurance Company filed this appeal on 18.02.2017, and to date, Respondent No. 2, i.e., the owner of the insured vehicle, has not been served.

**3.** Since the only argument raised and pressed in this appeal was that the driver of the insured vehicle had no valid licence and therefore, at least a pay and recovery order should have been made, service upon the 2nd Respondent was a must.

**4.** On 07.08.2026, this Court, after noticing that for the last almost nine years, the 2nd Respondent (owner) was not served in this matter, directed the compensation amount which was deposited by the Insurance Company to be released to the claimant, if not already released.

**5.** Mr Nikhil Ranjan was appointed to appear in this matter under the Legal Aid Scheme. He has not appeared. Mr Ishan Ashish, his junior, was requested by the Court as to whether he would assist the Court. He has graciously agreed to assist the Court. Accordingly, I have heard Mr Ishan Ashish on behalf of the claimant. However, he made no statement as to whether the claimant has already received the compensation amount.

**6.** The record shows that between 18.02.2017 and 01.05.2017, time was spent on clearing the office objections. From 2017 till date, time has been spent on serving the Respondents, including the 2nd Respondent.

**7.** Meanwhile, it appears that the learned Single Judge of this Court condoned the delay in filing this appeal, possibly because it was not pointed out that the 2nd Respondent has yet to be served.

**8.** Mr Manish Kumar states that the Insurance Company has taken steps from time to time, as and when directed; therefore, there is no negligence on the part of the Appellant-Insurance Company in serving the 2nd Respondent.

**9.** With respect, the above submission cannot be accepted for the simple reason that for the last nine years, the Appellant-Insurance Company has not been able to serve the 2nd Respondent. Mr Manish Kumar submits that the Appellant-Insurance Company will now file an application for substituted service through publication. There is no explanation why, for the last nine years, such an application was not filed. At this stage, there is no point in delaying the appeal any further.

**10.** Besides, the appellant's only contention is that the driver of the insured vehicle did not have a valid licence. To make good such contention, reference will have to be made to the pleadings, i.e. the written

statement filed by the Appellant-Insurance Company in the claim petition.

**11.** Since the records were called, the written statement was perused. On perusal, all that is stated in paragraphs 6 and 8 of the written statement is that the plaintiff (claimant) and the defendant no. 1 (owner) must be directed to produce the entire vehicular documents and original driving licence for proper verification by the Appellant-Insurance Company.

**12.** The entire written statement contains no positive statement that the insured vehicle, i.e., the truck bearing registration no. BIR 9131 was being driven by a driver who had no valid licence to drive the same.

**13.** The Appellant-Insurance Company did lead evidence of its investigator in the matter. This investigator produced the licence, which was exhibited as Ext.-A. Based on this licence, Mr Manish Kumar argued that it permitted the driver to drive a Light Motor Vehicle/PSV and not an HMV. Accordingly, Mr Manish Kumar submitted that this was a case of fundamental breach of insurance policy terms and the Appellant-Insurance Company could not be held liable and, in any event, a pay and recovery order should be made.

**14.** It is well settled that the evidence cannot travel beyond pleadings. This means that there cannot be any variation between pleadings and proof. Any evidence not backed by pleadings cannot be considered. This is because, without clear pleadings, the opposite parties are not put on notice that such a plea will be raised, and that evidence will be led in support of it.

**15.** In the case of **National Insurance Co. Ltd. versus Swaran Singh, (2004) 3 SCC 297** and **Narcinva V. Kamat and Another versus Alfred Antonio Doe Martins and Others [(1985) ACJ 397 (SC),** the

Hon'ble Supreme Court has held that the onus of establishing fundamental breach of the terms of the insurance policy would lie upon the Insurance Company which raises such a plea. Further, in **Narcinva V. Kamat (Supra),** the Hon'ble Supreme Court has held that the insured is not under an obligation to furnish evidence to enable the Insurance Company to wriggle out of its liability.

**16.** This is a case where for the last nine years, the Appellant-Insurance Company has not been able to serve the 2nd Respondent. There are no pleadings in the written statement of the Appellant-Insurance Company that the driver of the insured vehicle did not have a licence to drive a Heavy Motor Vehicle. Therefore, the plea now raised cannot be accepted.

**17.** Mr Manish Kumar now contends that the impugned award erred in awarding 12% interest in case the awarded amount is not paid within 60 days. He submits that this is quite excessive.

**18.** From the perusal of the award, it is apparent that only 6% interest from the date of filing of the claim petition was awarded by the Tribunal. However, it was stated that if the amount is not paid within 60 days from the date of the award, then the Appellant-Insurance Company shall be liable to pay 12% interest per annum on a daily basis.

**19.** While the award of interest on a 'daily basis' does not appear to be correct and warrants interference, the award of interest at the rate of 12% per annum in case the awarded amount is not paid within 60 days of the award calls for no interference. Such an award on a graded basis is quite consistent with the law laid down by the Hon'ble Supreme Court in **Shishu Pal @ Shish Ram and others versus Surjeet and others [2026 INSC 634]**.

**20.** The above modification to the impugned order is ordered and can be made even in the absence of the 2nd Respondent because the same affects the claimant who is represented and heard through his Advocate.

**21.** The appeal is partly allowed to the above extent only, without any order for costs.

**22.** Upon proof that the entire awarded amount as determined in the award (as now modified) is fulfilled, the Registry can refund the statutory deposit amount of Rs. 25,000/- to the Appellant-Insurance Company.

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

**September 11, 2026**
N.A.F.R.
Ranjeet/R.Kr./Cp.2
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