IN THE HIGH COURT OF JHARKHAND AT RANCHI

M. A. No. 332 of 2017

National Insurance Company Limited, Dhansar, P.O. & P.S. Dhansar, District - Dhanbad.

... Defendant-Opposite Party No.2/Appellant

Versus

1. Savitri Devi, wife of Late Jitendra Bhandari,
2. Anisa Kumari, daughter of Late Jitendra Bhandari,
3. Krish Kumar, son of Late Jitendra Bhandari,
4. Gultan Bhandari, son of Late Dukhu Bhandari,
5. Sandhaya Devi, wife of Gultan Bhandari,
   All residents of Village Harna Basti, P.O. & P.S. Baghmara, District - Dhanbad. (Claimants No.1 to 5 respectively)
6. Rajeev Kumar Singh, Son of Ajit Kumar Sinha, resident of House No. 11, Katras Road, P.O. & P.S. Matkuria, District - Dhanbad (Opposite Party No.1)

... Plaintiffs-Claimants/Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mr Alok Lal, Advocate
Mr Santosh Kumar, Advocate

For the Respondents: Mr Mukesh Bihari Lal, Advocate
Mr Rajiv Kumar Karan, Advocate

Reserved on: 24.08.2026 **Pronounced on: 27/08/2026**

1. Heard learned counsel for the parties.

2. Since sufficient cause is shown, the delay is condoned, and I.A. No. 4930 of 2017 is disposed of.

3. M.A. No. 332 of 2017 by the appellant-Insurance Company (original Defendant/Opposite Party No.2) challenges the Judgment and Award dated 22nd of December 2016 made by the Motor Accident Claim Tribunal, Dhanbad (Tribunal), in Motor Accident Claim Case No. 295 of 2014, whereby the Tribunal has directed the appellant to make payment of Rs. 14,37,000/- to the plaintiffs within a period of two months, failing which the payment of compensation will carry interest @ 7% p.a.

4. The appellant insurance company contends that the Tribunal applied the wrong test and procedure in computing compensation, that the driver of the offending tanker did not hold a valid and effective driving licence authorising him to drive a petrol/oil tanker, and that, consequently, the insurer is not liable to indemnify the insured. In any event, a pay and recovery order should have been made.

5. The claimants, on the other hand, submit that the compensation awarded is meagre and should be enhanced in accordance with the settled principles laid down by the Hon'ble Supreme Court.

6. Based on the rival arguments and the material on record, the following points for determination arise:

I. Whether the driver of the offending tanker lacked a valid and effective driving licence for the category of vehicle involved and whether, on that ground, the appellant-insurer stands absolved of the liability to satisfy the award?

II. Whether the Tribunal applied an incorrect test and procedure in assessing compensation and, consequently, whether the compensation awarded is not just and reasonable?

7. Insofar as the first point of determination is concerned, it is the appellant's principal contention is that the driver, though holding a licence to drive a transport vehicle (HGV and LMV), did not possess the mandatory endorsement under Section 14 (2) (a) of the Motor Vehicles Act, 1988 read with Rule 9 of the Central Motor Vehicles Rules, 1989, authorising him to drive a tanker carrying dangerous and hazardous goods.

8. Mr Alok Lal, Ld. Advocate for the Appellant argued that the authorisation to drive one category of vehicle does not, by itself, authorise the driving of another specified description of vehicle, and that the absence of the Rule 9 endorsement constitutes a fundamental breach of the policy, disentitling the insurer from the obligation to indemnify. Reliance in this regard is placed on **M/s Chatha Service Station v. Lalmati Devi, 2025 INSC 468.**

9. To begin with, it is pertinent to state that the legal principle raised by the Appellant must be stated with some care, since the same contention is likely to be reagitated in other cases. In the case of **National Insurance Co. Ltd. v. Swaran Singh, reported in (2004) 3 SCC 297**, the Hon'ble Supreme Court drew a distinction between an "effective licence" under Section 3 and the expression "duly licensed" under Section 149, as it then stood.

10. The Hon'ble Court in the said case enumerated the contingencies in which an insurer may seek to avoid indemnity, including cases where the driver holds a licence for one type of vehicle and is found driving another type, or holds a fake or learner's licence, or has no licence at all. Even in such cases, the Hon'ble Court held that the insurer is not automatically discharged.

11. The Hon'ble Court went on to observe that **on the evidence led before the Tribunal, a decision must be taken whether the fact of the driver possessing a licence for one type of vehicle, but found driving another type, was the main or contributory cause of the accident. If the accident is attributable solely to some other cause having no nexus with the want of the requisite type of licence, the insurer cannot avoid liability merely for a technical breach of conditions concerning the driving licence. The burden of proving a fundamental breach, and of establishing its causal connection with the accident, rests on the insurer.**

12. The Hon'ble Supreme Court in the case of **Chatha Service Station (supra)** does not dilute that principle. The Hon'ble Court stated that Rule 9 requires that a person driving a goods carriage carrying goods of a dangerous or hazardous nature to human life must, in addition to a transport-vehicle licence, possess a certificate of having successfully completed the prescribed course, the syllabus of which includes professional and defensive driving skills as well as product safety and emergency procedures.

13. The Hon'ble Court further observed that the endorsement under Section 11 read with Rule 9 is not an empty formality. The Hon'ble Supreme Court held that the breach of that requirement cannot be brushed aside as a mere technicality where the vehicle is an oil tanker designed to carry hazardous goods, the vehicle was in fact carrying oil at the relevant time, and the accident was caused by rash and negligent driving of a driver who was not authorised to drive that description of vehicle.

14. On those facts, the Hon'ble Court upheld a direction to the insurer to pay and recover from the owner. The owner's plea that no hazardous goods were being carried was specifically rejected because it stood contradicted by the driver's own testimony.

15. Having perused the aforesaid decisions and the principles laid down therein, this Court is of the considered view that the present case is distinguishable on facts, particularly regarding the circumstances which the Hon'ble Supreme Court considered material in **Chatha Service Station (Supra)**.

16. In the instant case, there is no evidence on record that tanker No. JH-10K-0720 was carrying dangerous or hazardous goods at the time of the accident. The F.I.R., the charge-sheet and the oral evidence establish only that the tanker was being driven rashly and negligently and that it dashed against the motorcycle of the deceased.

17. It is pertinent to mention that the appellant has led no evidence whatsoever in support of this contention. No survey report, goods receipt or other contemporaneous material has been placed on record to establish the nature of the cargo, if any, being transported through the tanker.

18. The statutory requirement under Rule 9 is attracted where a goods carriage is being used for carrying goods of a dangerous or hazardous nature. In the absence of any material establishing that the tanker was carrying goods of a dangerous or hazardous nature at the time of the accident, and in the absence of any evidence otherwise establishing the applicability of the Rule 9 requirement in the facts of the present case, this Court finds no basis to presume that the alleged absence of such endorsement constituted a breach of the policy conditions.

19. The present case therefore stands on a materially different evidentiary footing from ***Chatha Service Station (Supra)***, where the hazardous nature of the goods being carried and the absence of the requisite endorsement were established on the evidence. As noted earlier, in that case there was clear evidence that the tanker was carrying goods of a dangerous or hazardous nature at the time of the accident, whereas no such material or evidence exists in the present case.

20. Moreover, the Tribunal examined the photocopy of the driving licence of the driver Santosh Kumar Yadav (Mark X) and found that it was valid from 22.12.2009 to 21.12.2012. The accident having occurred on 29.12.2011, the finding that the driver held a valid and effective licence at the relevant time is based on the material available on record. The temporary permit of the vehicle was also found to be valid.

21. The appellant, in the case at hand, has not led any evidence to establish either a fundamental breach or any causal nexus between the alleged want of endorsement and the accident. A mere assertion in the written statement or during arguments cannot take the place of proof. The onus of establishing such a breach, and of demonstrating that it was the main or contributory cause of the accident, lay upon the insurer. **[Swaran Singh (Supra); Narcinva V. Kamat v. Alfredo Antonio Doe Martins, (1985) 2 SCC 574].** That onus has remained undischarged.

22. Even otherwise, **Chatha Service Station (Supra)** does not support the claim of complete exoneration. At the highest, the decision affirms the principle of pay and recover where a material breach is established. In the present case, the foundational facts necessary to attract that principle are absent. The Tribunal's conclusion that the appellant-insurer is liable to satisfy the award therefore calls for no interference.

23. Point No. (i) is answered against the appellant.

24. The Tribunal assessed the age of the deceased Jitendra Bhandari at 30 years, which is not under challenge. The multiplier of 17 applied by the Tribunal is correct.

25. On the question of income, the claimants pleaded and consistently deposed through P.W.1, P.W.2, P.W.3 and P.W.4 that the deceased was a barber running his own saloon and was earning Rs. 12,000/- per month. The Tribunal discarded the Mukhiya's income certificate on the ground that a Mukhiya has no authority to certify a villager's daily income and thereupon halved the claimed income to Rs. 6,000/- per month.

26. While it is correct that a certificate issued by a Mukhiya does not carry the same evidentiary value as a formal document issued by a competent authority, the oral evidence of the witnesses is consistent, mutually corroborative and has remained largely unshaken. The mere fact that the Mukhiya's certificate is not authoritative cannot, by itself, justify relegating the income to half of what has been consistently deposed.

27. It is well settled that in claims arising out of the death of self-employed persons, particularly those belonging to modest economic backgrounds, strict proof of income in the form of income-tax returns or audited accounts is not insisted upon. In this regard, reliance can be placed upon the judgment of the Hon'ble Apex Court in the case of **Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited, reported in (2011) 13 SCC 236.**

28. The Hon'ble Supreme Court in the said case has categorically held that the Tribunal need not accept the claim of the claimant in all cases and in all circumstances in the absence of supporting material. It depends on the facts of each case. If the claim made is exorbitant or contrary to ground realities, the Tribunal may proceed to determine the possible income by resorting to reasonable guesswork having regard to the ground realities prevailing at the relevant point of time. However, where the claim is honest and bona fide, there is no justification for arbitrarily reducing it.

29. In the instant case, the accident occurred in 2011 in the industrial belt of Dhanbad. The deceased was a self-employed barber running his own saloon. Having regard to the consistent oral testimony of the witnesses and the ground realities of the area at the relevant time, this Court is of the view that the Tribunal was not justified in reducing the monthly income to Rs. 6,000/-. A reasonable assessment of the deceased's monthly income is fixed at Rs. 10,000/-.

30. The deceased was 30 years of age and self-employed. An addition of 40% towards future prospects is warranted in terms of **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680**. Annual income for computation is therefore Rs. 1,68,000/-.

31. Deduction towards personal and living expenses is one-fourth, as there are five claimants (wife, two children, and parents). Loss of dependency is calculated as under:

Rs. 1,68,000 × 17 = Rs. 28,56,000
Less 1/4th (Rs. 7,14,000)
Loss of dependency: Rs. 21,42,000/-

32. Compensation towards conventional heads is awarded in accordance with the principles laid down in the dicta of **Pranay**

Sethi (supra) and **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram, (2018) 18 SCC 130,** respectively. It is as follows**:**

> **Loss of consortium (spousal, parental and filial) at Rs. 40,000/- each for the five claimants: Rs. 2,00,000/-**
> **Funeral expenses: Rs. 15,000/-**
> **Loss of estate: Rs. 15,000/-**

33. The total compensation is therefore determined at:

> **Loss of dependency: Rs. 21,42,000/-**
> **Consortium: Rs. 2,00,000/-**
> **Funeral expenses: Rs. 15,000/-**
> **Loss of estate: Rs. 15,000/-**
> **Total: Rs. 23,72,000/-**

34. At this juncture, it is pertinent to observe that, on the question of enhancement of compensation, the power of this Court on the appellate side under Order XLI Rule 33 of the Code of Civil Procedure is sufficiently wide to enable this Court, in an appropriate case, even in the absence of a cross-appeal or cross-objection, to grant such relief as may be necessary to do complete justice between the parties.

35. The Hon'ble Supreme Court, in **Nagappa v. Gurudayal Singh, (2003) 2 SCC 274,** held that a Motor Accidents Claims Tribunal can award compensation more than what may be claimed in the claim petition.

36. In the case of **Surekha v. Santosh, (2021) 16 SCC 467**, the Hon'ble Supreme Court has categorically recognised the Appellate

Court's power to award just compensation even in the absence of a formal appeal or cross-objection.

37. The MV Act provisions cast a duty upon the Tribunal to determine and award just compensation irrespective of whether it is claimed or not. An appeal against the Tribunal's award is, in a sense, a continuation of the original proceedings. This duty cannot be abandoned simply because no cross-appeal or cross-objections may have been filed. The powers of the appellate court are quite wide and, having regard to the purpose of enacting the beneficial provisions to ensure that victims are justly and quickly compensated, they must be liberally construed.

38. Pertinently, in the case at hand, the deceased was self-employed as a barber and the claimants are his legal representatives. The Tribunal, while accepting the deceased's occupation, reduced the monthly income from Rs. 12,000/- to Rs. 6,000/- without any independent material indicating that the deceased's actual earnings were only to that extent.

39. The resulting compensation was consequently assessed without due regard to the evidence on record and the principles governing determination of just compensation. Having regard to these circumstances, this Court considers the present case an appropriate one for the exercise of its appellate jurisdiction under Order XLI Rule 33 of the Code of Civil Procedure, so as to ensure that the claimants receive just compensation.

40. Point No. (ii) is accordingly answered by holding that the compensation awarded by the Tribunal is not just and reasonable and requires enhancement.

41. The appeal is dismissed. The compensation is enhanced from Rs. 14,37,000/- to Rs. 23,72,000/-. Any amount already paid shall be adjusted. Interest is awarded at 6 % per annum from the date of the claim petition till actual realisation.

42. The appellant-Insurance Company shall satisfy the enhanced award in accordance with law.

43. The appellant-Insurance Company is directed to deposit the enhanced amount, i.e. Rs. 23,72,000/- before the Tribunal within eight weeks from today, after due intimation to the learned counsel for the claimants.

44. Upon deposit, the Tribunal shall permit the claimants to withdraw the amount by transfer to their joint bank account through regular banking channels.

45. The learned counsel for the claimants shall furnish the necessary identity and bank particulars to the Tribunal.

46. There shall be no order as to costs. Pending interlocutory applications, if any, stand disposed of.

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

August 27, 2026

A.F.R.

Manoj/Cp.2

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