IN THE HIGH COURT OF JHARKHAND AT RANCHI

M.A. No. 196 of 2018

1. Asha Devi W/o Late Pintu Mandal age about 27 years;
2. Shyam Chand Mandal (minor age about 6 years) son of Late Pintu Mandal, represented through his mother and natural guardian Asha Devi w/o Late Pintu Mandal i.e. Appellant No. 1;

   Both resident of village Basmati, P.O. and P.S. Maheshpur, District -Pakur, Jharkhand. ... ... Appellants

Versus

1. Sri Umesh Kumar son of Late Ramji Prasad Bhagat, resident of village -Amrapara, P.O. and P.S. - Amrapara, District - Pakur, Jharkhand.
2. Branch Manager, the New India Assurance Company Limited, Umarpur (512903), Banipur Ghorsala Umarpur, District Murshidabad (W.B) Pin Code -742229 Cum. Chandrolok complex 2nd Floor, Ghantadhar Bhagalpur, P.O. and P.S.-Bhagalpur, District - Bhagalpur (Bihar).

… … Respondents

With

M.A. No. 481 of 2016

Branch Manager, the New India Assurance Company Limited, 2nd Floor, Ghantaghar, Bhagalpur, P.O., P.S. & District- Bhagalpur, (Bihar) Policy Issuing Office at Umarpur (512903), Banipur Ghorsala Umarpur, District Murshidabad (W.B).

... ... Appellant

Versus

1. Asha Devi Wife of Late Pintu Mandal
2. Shyam Chand Mandal son of Late Pintu Mandal,

   Both resident of village- Basmati, P.S.-Maheshpur, P.O.-Maheshpur, District -Pakur (Jharkhand).
3. Sri Umesh Kumar son of Late Ramji Prasad Bhagat, resident of village -Amrapara, P.S. - Amrapara, P.O. - Amrapara, District – Pakur (Jharkhand)

… … ... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellants: Mr. Arvind Kumar Lal, Advocate
Md. Asadul Haque, Advocate
Mrs. D. Arati Kumari, Advocate
Mr. Shivam Singh Kashyap, Advocate

For the Ins. Company: Mr. Ganesh Chandra Jha, Advocate

[M.A. No. 196 of 2018]

For the Ins. Company: Mr. Ganesh Chandra Jha, Advocate
For the Respondents: Mr. Arvind Kumar Lall, Advocate
Md. Asadul Haque, Advocate
Mrs. D. Arati Kumari, Advocate
Mr. Shivam Singh Kashyap, Advocate
Mr. Gautam Kumar, Advocate
Mr. Ashutosh Kumar Sinha, Advocate

[M.A. No. 481 of 2016]

Reserved on: 11.09.2026 **Pronounced on: 14/09/2026**

1. Heard the learned counsel for the parties.

2. These two Miscellaneous Appeals arise from the Judgment and Award dated 12.05.2016, passed by the Claims Tribunal, Pakur, in M.A.C.T. Case No. 27 of 2014, whereby the Tribunal directed The New India Assurance Company Limited to pay the claimants Rs. 6,72,432/-, together with simple interest at 6% per annum from the date of filing the claim application, i.e. 17.02.2014, till realisation.

3. M.A. No. 196 of 2018 has been preferred by the claimants, being aggrieved by the quantum of compensation awarded by the Tribunal. On the other hand, M.A. No. 481 of 2016, has been preferred by the insurer.

4. It is contended by Mr Arvind Kumar Lall, learned counsel for the claimants, that the Tribunal adopted an erroneous approach in computing compensation and that the award is not in accordance with the settled principles governing the determination of just compensation under the Motor Vehicles Act, 1988.

5. The principal contention raised on behalf of the insurer is that the offending vehicle was carrying more passengers than its permitted capacity at the time of the accident, thereby constituting a breach of the policy terms and conditions. It is

accordingly submitted that, although the insurer may be required to satisfy the award in the first instance, it ought to have been granted liberty to recover the amount so paid from the owner of the offending vehicle.

6. In view of the rival submissions, the following points arise for determination:

I. *Whether the insurer is entitled to a direction to pay and recover on the plea that the offending vehicle was carrying passengers more than the permitted capacity, in breach of the terms and conditions of the policy?*

II. *Whether the compensation awarded by the Tribunal is just and reasonable and, if not, to what extent does it require enhancement?*

7. Insofar as the first point is concerned, the insurer seeks to invoke the principle of pay and recover on the premise that the offending vehicle was carrying gratuitous passengers more than the number permissible under the terms of the insurance policy.

8. Elaborating the aforesaid submission, learned counsel for the insurer has drawn attention to paragraph 4 of the written statement filed before the Tribunal, wherein the aforesaid plea was specifically taken.

9. Additionally, reliance has also been placed upon Exhibit 1, being the certified copy of the First Information Report produced by the claimants themselves. According to the insurer, even a cursory reading of the FIR would indicate that more than thirteen persons were travelling in or riding the offending vehicle at the time of the accident.

10. It is, thereafter, fairly submitted that no specific issue was framed by the Tribunal in this regard. Nevertheless, it is urged that the omission to frame such an issue would not preclude this Court, in exercise of its appellate jurisdiction, from considering the plea, particularly when the insurer contends that the material available on record is sufficient to establish the alleged breach.

11. On perusing the entire material on record, it appears that the plea regarding breach of the terms and conditions of the policy was undoubtedly raised in the written statement. However, the mere raising of such a plea does not, by itself, establish a breach of the policy conditions. The question, therefore, is whether the insurer has discharged the burden of proving the alleged breach by cogent evidence.

12. The legal position in this regard is well settled. In the case of **National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297,** the Hon'ble Supreme Court has held that the burden of establishing a fundamental breach of the terms and conditions of the insurance policy lies upon the insurance company which raises such a plea. The insurer, therefore, cannot succeed merely by pleading a breach; it must establish the same by evidence.

13. The aforesaid principle flows from the statutory scheme itself. While considering the provisions of Section 149 of the Motor Vehicles Act, 1988, the Hon'ble Supreme Court in **Swaran Singh (supra)** has held that once the insured establishes that the accident is covered by the compulsory insurance clause, the insurer, seeking to avoid its liability on the ground of an

exception, must establish the facts bringing the case within such exception. Thus, insofar as a breach of the policy condition is concerned, the onus rests upon the insurer who asserts the breach.

14. The same principle finds expression in **Narcinva V. Kamat v. Alfredo Antonio Doe Martins, 1985 ACJ 397 (SC)**, wherein the Hon'ble Supreme Court, while reiterating that the burden of proving breach of the terms of the insurance policy lies upon the insurance company, held that the insured is not required to adduce evidence merely to enable the insurer to wriggle out of its statutory liability.

15. It is in the backdrop of the aforesaid settled position that the contention of the insurer in the present case is required to be examined. The insurer relies principally upon Exhibit 1, the certified copy of the FIR, to contend that more than thirteen passengers were travelling in or riding the offending vehicle at the relevant time. The FIR, however, cannot, by itself, be treated as substantive evidence of the facts stated therein.

16. It is settled law that the contents of an FIR are not substantive evidence. An FIR may, in an appropriate case, be used for the limited purposes recognised in law, including corroboration or contradiction of its maker; however, the facts stated therein cannot, merely by virtue of their incorporation in the FIR, be treated as proved. The Hon'ble Supreme Court has reiterated this principle in **Hasib v. State of Bihar, (1972) 4 SCC 773,** and **Damodar Prasad Chandrika Prasad v. State of Maharashtra, (1972) 1 SCC 107.** The Tribunal, and this Court in appeal, must,

therefore, determine the issue based on the evidence properly brought on record in the claim proceedings.

17. Tested on the touchstone of the aforesaid principles, the evidence led in the present case does not support the plea of the insurer. C.W. 1, Delip Mandal, stated in his examination-in-chief that, on 29.12.2013, the deceased was returning as a passenger in the offending vehicle when the vehicle met with the accident and turned turtle.

18. In cross-examination, he specifically stated that, apart from Pintu Mandal, nobody else was travelling in the offending vehicle. In further cross-examination on behalf of the insurer, he stated that, at the time of the accident, Pintu Mandal and the driver were travelling in the vehicle. He also stated that he was not present at the place of occurrence when the accident took place, that the police had not recorded his statement and that he had seen the vehicle subsequently.

19. C.W.2, Asha Devi, the widow of the deceased, admittedly did not witness the accident. She also did not state anything about the number of persons travelling in the offending vehicle. Her evidence, therefore, neither supports nor contradicts the specific statement made by C.W.1 regarding the persons travelling in the vehicle.

20. More importantly, the insurer has not brought any independent evidence on record to dislodge C.W.1’s testimony. No witness has been examined on behalf of the insurer to establish that the offending vehicle was carrying passengers more than its permitted capacity. Neither the Investigating Officer, the driver,

nor any occupant of the vehicle has been examined for this purpose. The insurer has also not produced any independent documentary material establishing the vehicle's seating capacity and correlating it with the number of persons actually travelling therein at the time of the accident.

21. In such circumstances, the mere recital in the FIR that a larger number of persons were travelling in the vehicle cannot discharge the burden which rests upon the insurer under the law laid down in **Swaran Singh (supra)**. The written statement contains only the plea; the FIR provides, at best, the basis for raising the plea. Neither, in the absence of substantive evidence, establishes the alleged fundamental breach.

22. Learned counsel for the insurer has placed reliance upon **Amrit Paul Singh v. TATA AIG General Insurance Co. Ltd., (2018) 7 SCC 558.** However, that decision operates in a materially different factual setting. In **Amrit Paul Singh (supra)**, the record contained positive and demonstrable evidence that the vehicle was being used without a permit at the time of the accident. It was in that factual context that the Hon'ble Supreme Court held that the principles laid down in **Swaran Singh (supra)** and **Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100,** would not come to the aid of the insurer in the manner contended.

23. There is no conflict between the principles laid down in **Amrit Paul Singh (supra)** and those enunciated in **Swaran Singh (supra)** or **Narcinva V. Kamat (supra)**. **Amrit Paul Singh (Supra)** proceeds based on positive evidence establishing the

statutory infraction. The present case stands on an entirely different footing. Here, the insurer alleges overloading and carriage of gratuitous passengers, but it has not established the alleged breach with cogent evidence.

24. In view of the foregoing discussion, the insurer has failed to discharge the burden of establishing the alleged breach of the policy's terms and conditions. The fact that the Tribunal did not frame a specific issue on this aspect does not, by itself, preclude this Court from examining the contention in appeal; however, because the plea was not established by cogent evidence, no direction to pay and recover can be granted on that basis.

25. Point No. (i) is, accordingly, answered against the insurer.

26. Regarding Point No. (ii), the Tribunal assessed the monthly income of the deceased at Rs. 4,628/-, applied multiplier 18 with reference to the Second Schedule to the Act, deducted one-third towards personal and living expenses and awarded Rs. 2,000/- each under the heads of funeral expenses, loss of love and affection and loss of estate. No amount was awarded towards future prospects or consortium. On that basis, the Tribunal determined the total compensation at Rs. 6,72,432/-.

27. Insofar as the multiplier is concerned, the claim in the present case is under Section 166 of the Motor Vehicles Act, 1988. The Second Schedule, therefore, cannot govern the determination of the multiplier. The deceased was about 28 years old. In terms of the principles laid down by the Hon’ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121**, the appropriate multiplier for the age group of 26 to 30 years is 17.

28. The deceased left behind his widow and one minor son. Accordingly, the deduction of one-third towards personal and living expenses, as adopted by the Tribunal, is in accordance with the principles laid down in **Sarla Verma (supra)**. The said deduction, therefore, calls for no interference. However, the multiplier requires correction from 18 to 17.

29. The principal controversy, thereafter, concerns the deceased's income. C.W. 1 deposed that the deceased was a businessman who, along with other labourers, prepared and sold sweets in the market/hatia/hath, and that he earned approximately Rs. 500/- per day.

30. In his cross-examination, he stated that he had worked in the shop of Pintu Mandal for about five years and that the shop closed after the demise of the deceased. C.W. 2, the widow of the deceased, similarly deposed that her husband was a sweet-seller and that they had a sweet shop from which he earned about Rs. 500/- per day. In cross-examination, she stated that her husband earned between Rs. 500/- and Rs. 600/- from the sale of sweets.

31. The insurer has sought to read the aforesaid evidence as meaning that the deceased sold sweets only on the days of market/hatia/hath and, therefore, his income should be assessed at Rs. 500/- multiplied by four or, at the highest, five days in a month, resulting in a monthly income of approximately Rs. 2,500/-.

32. The aforesaid submission of the insurer, however, does not find adequate support from the evidence. Both witnesses have stated

that the deceased regularly worked as a sweet-seller and have consistently referred to his daily earnings. The mere fact that the accident happened to occur on a *hat* day does not lead to the conclusion that the deceased carried on his occupation only on such days.

33. On the contrary, C.W.1's statement that he had worked in the deceased's shop for about five years and that the shop closed after the deceased's death is indicative of a regular business activity rather than an occasional hat-day occupation.

34. C.W.2 has also spoken of the existence of a sweet shop and of the income derived by the deceased from the sale of sweets. The evidence, therefore, establishes the nature of the deceased's occupation, even though it does not establish his precise income by documentary evidence.

35. It is true that the claimants have not produced any wage register, attendance record, bank statement, business licence or other documentary material capable of establishing the deceased's exact income. In those circumstances, the Tribunal assessed the monthly income at Rs. 4,628/-. That assessment cannot be said to be wholly without basis. At the same time, the absence of documentary evidence cannot justify mechanically adopting the lowest figure, particularly when consistent oral evidence supports the occupation and general level of earnings.

36. The Hon'ble Supreme Court has explained this approach in a series of decisions. In the case of **Chameli Devi v. Jivrail Mian, (2019) 4 SCC 415,** the Court recognised that formal documentary proof of income may not ordinarily be available in respect of

persons engaged in certain occupations and that oral evidence can legitimately form the basis of a reasonable assessment.

37. Likewise, in **Chandra @ Chanda @ Chandraram v. Mukesh Kumar Yadav, (2022) 1 SCC 198,** the Hon'ble Supreme Court held that minimum wages may serve as a useful yardstick in the absence of documentary evidence but cannot be treated as an inflexible measure of actual income.

38. Also, in **Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236**, reasonable guesswork, having regard to the deceased's occupation and the surrounding circumstances, has been recognised as permissible, provided the assessment remains realistic. More recently, in **Oriental Insurance Co. Ltd. v. Kalu Ram, 2026 INSC 653,** the Court reiterated that it need not mechanically adhere to the lowest figure merely because documentary evidence has not established the precise income.

39. The aforesaid principles make it clear that income assessment cannot be reduced to a mechanical exercise. While the claim of Rs. 500/- to Rs. 600/- per day cannot be accepted in full in the absence of supporting accounts or other documentary material, there is equally no justification for confining the income to Rs. 4,628/- per month, or, as suggested by the insurer, to Rs. 2,500/- per month. The oral evidence of C.W.1 and C.W.2 is consistent regarding the deceased's occupation and the broad level of his earnings. That evidence remained substantially unshaken in cross-examination and was not rebutted by any contrary evidence led by the insurer.

40. Having regard to the deceased's occupation as a sweet-maker, the evidence on record and the prevailing circumstances, this Court assesses the deceased's monthly income at **Rs. 7,500/-.** In the considered view of this Court, this figure is a reasonable assessment that neither accepts the uncorroborated claim of Rs. 500/- to Rs. 600/- per day in its entirety nor mechanically adopts the lower figure adopted by the Tribunal.

41. The deceased was self-employed and was below 40 years of age. Consequently, an addition of 40% towards future prospects is warranted in terms of the principles laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680.**

42. The loss of dependency is, accordingly, worked out as follows:

Rs. 7,500/- × 12 = Rs. 90,000/-
Add 40% towards future prospects = Rs. 1,26,000/-
Less 1/3rd towards personal expenses = Rs. 84,000/-
Rs. 84,000/- × 17 = Rs. 14,28,000/-

43. Accordingly, the loss of dependency comes to Rs. 14,28,000/-.

44. Insofar as the conventional heads are concerned, consortium is payable to each of the two claimants at Rs. 40,000/- each, amounting to Rs. 80,000/-, in view of the principles laid down by the Hon'ble Supreme Court **in Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130**.

45. A sum of Rs. 15,000/- is awarded towards funeral expenses and a further sum of Rs. 15,000/- towards loss of estate. No separate amount is payable under the head of loss of love and affection once consortium is awarded.

46. The total compensation is, therefore, computed at Rs. 15,38,000/-.

47. The compensation of Rs. 15,38,000/- so determined represents the just compensation payable to the claimants. The Tribunal has awarded interest at the rate of 6% per annum from 17.02.2014, i.e. the date of filing of the claim petition. The said rate and the date from which interest is payable do not warrant interference and are, accordingly, maintained.

48. In view of the foregoing discussion, Point No. (ii) is answered by holding that the compensation awarded by the Tribunal is not just and reasonable and requires enhancement.

49. Accordingly, the compensation payable to the claimants is enhanced to Rs.15,38,000/-, together with interest at the rate of 6% per annum from 17.02.2014 till payment.

50. Consequently, **M.A. No. 481 of 2016, preferred by the insurer, is dismissed, whereas M.A. No. 196 of 2018, preferred by the claimants, is allowed.** The compensation is enhanced to Rs. 15,38,000/- from Rs. 6,72,432, together with interest at the rate of 6% per annum from 17.02.2014 until payment.

51. The appellant-insurer shall deposit the enhanced amount before the learned Tribunal within a period of eight weeks from today, after giving due credit to the amount, if any, already deposited or paid pursuant to the impugned award.

52. Any statutory amount deposited before this Court shall also be duly adjusted against the amount so directed to be deposited.

53. Upon such deposit, the learned Tribunal shall permit the claimants to withdraw the amount in accordance with law. The

learned counsel for the claimants shall furnish the necessary identity and bank particulars before the learned Tribunal.

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

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

September 14, 2026
A.F.R.
APK/VK
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