IN THE HIGH COURT OF JHARKHAND AT RANCHI

Miscellaneous Appeal No. 307 of 2017

M/S National Insurance Company Limited, Divisional Manager, Divisional Office, At B.P. Agarwalla Building, Dhansar, P.O. Dhansar, P.S. Bank More, District- Dhanbad, represented through its Jharkhand Legal Cell, Kutchery Road, P.O. Ranchi University, P.S. Kotwali, District- Ranchi

(Insurer of Truck No. BHG-0669) ... Appellant

Versus

1. Maya Devi, Wife of Late Surendra Pathak.
2. Khushbu Kumari (Minor), Daughter of Late Surendra Pathak.
3. Kiran Pathak (Minor), Daughter of Late Surendra Phatak.
4. Prasanjit Pathak (Minor), Son of Late Surendra Phatak.

2 to 4 being minor are represented thorugh their mother and natural Guardian, Maya Devi, Respondent No. 1.

All resident of Village- Bansjora, P.O. Kharkharee, Nawagarh, P.S. Madhuban, District- Dhanbad, Jharkhand.

5. Urmila Poddar, Wife of Sri Ramesh Kumar Poddar, Resident of Anugrah Nagar, Dhansar, P.O. & P.S. Dhansar, District- Dhanbad. (Owner of Truck No. BHG-0669). ... Respondents

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CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mr. Manish Kumar, Advocate

For Resp. Nos. 1 to 4: Mr. M.B. Lal, Advocate

Mr. Rajiv Kumar Karan, Advocate

For Resp. No. 5: Mr. Deepak Kumar Sinha, Advocate

Reserved on: 11.09.2026 **Pronounced on: 16/09/2026**

1. Heard the learned counsel for the parties.

2. The insurer has preferred this miscellaneous appeal against the Judgment and Award dated 26.09.2016 passed by the District Judge-IV-cum-M.A.C.T. Judge, Dhanbad, in T (M.V.) Case No.173 of 2014.

3. By the said Award, the appellant-insurer was directed to pay Rs.20,16,456/- to the claimants, together with interest at the rate of 6% per annum from 08.09.2014.

4. Learned counsel for the appellant submits that the Tribunal ought to have directed the insurer to first satisfy the award and thereafter recover the amount from the owner of the offending vehicle.

5. It is further submitted that the aforesaid challenge is predicated on the ground that, at the time of the accident, the driver of the offending vehicle was not holding a valid and effective driving licence. Accordingly, it is contended that this circumstance constituted a fundamental breach of the terms and conditions of the insurance policy, warranting a direction to pay and recover.

6. Per contra, learned counsel for the claimants supports the finding on the issue of liability. However, he submits that the compensation awarded by the Tribunal requires to be reassessed in accordance with the principles laid down by the Hon'ble Supreme Court in ***Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121, National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680*** and ***Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130*****.**

7. Lastly, learned counsel appearing for the owner of the offending vehicle submits that the insurer has failed to adduce any positive and cogent evidence to establish the alleged breach of the terms and conditions of the insurance policy. It is, therefore, contended that, in the absence of proof of such breach, no direction to pay and recover can be issued in favour of the insurer.

8. 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 driver of the offending vehicle did not hold a valid and effective driving licence?*
>
> II. *Whether the compensation awarded by the Tribunal is just and reasonable and, if not, to what extent does it require correction?*

9. The first question for consideration is whether the appellant-insurer has established a breach of the terms and conditions of the insurance policy to entitle it to a direction to first satisfy the award and thereafter recover the amount from the owner of the offending vehicle.

10. Insofar as this contention is concerned, the appellant contends that the driver, Mantu Prasad Dutta, did not hold a valid and effective driving licence at the time of the accident and, consequently, the owner committed a fundamental breach of the conditions of the insurance policy.

11. In support of the aforesaid contention, reliance has been placed upon the plea taken in paragraph 7 of the written statement, the insurance policy (Exhibit A) and, in addition thereto, the deposition of Ganga Sagar Singh, who was examined on behalf of the appellant.

12. It is therefore necessary to examine whether the aforesaid material is sufficient to discharge the burden on the insurer seeking to avoid its statutory liability on the ground of breach of the policy conditions.

13. In this regard, the legal position is no longer res-integra. In ***National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC***

***297*, the Hon'ble Supreme Court** held that the burden of proving a fundamental breach of the policy terms and conditions rests with the insurer. More particularly, the person alleging such breach is required to establish the same by cogent evidence. Thus, a mere allegation of breach, without proof of the facts constituting such breach, would not be sufficient to absolve the insurer of its liability.

14. Furthermore, in the case of ***Narcinva V. Kamat v. Alfredo Antonio Doe Martins, 1985 ACJ 397 (SC)***, the Hon'ble Supreme Court had likewise held that the burden of proving a breach of the policy conditions lies upon the insurance company. In other words, the insured cannot be called upon to produce evidence merely to enable the insurer to establish a defence which the insurer itself is required, in law, to prove.

15. Against this backdrop, the evidence led by the appellant must be examined.

16. At the outset, Exhibit A establishes the contract of insurance between the parties. However, the existence of the insurance policy and the conditions contained therein are entirely distinct from the proof of a breach of those conditions. The former may establish the contractual relationship; it does not, by itself, establish the latter.

17. More importantly, the only witness examined by the appellant, namely, Ganga Sagar Singh, was admittedly a panel investigator. In paragraph 3 of his deposition, he stated that he had not seen either the driving licence or the permit of the offending vehicle, as the owner had not furnished those documents. Nevertheless, in paragraph 4, he stated that the owner had intentionally and negligently permitted the vehicle to be driven without a proper permit and driving licence.

18. The difficulty with the aforesaid evidence is apparent. A witness who admittedly had not seen the driving licence could not, based on his own knowledge, establish that the driver was not holding a valid and effective licence. His statement, insofar as it attributes a deliberate or negligent breach to the owner, is therefore no more than an inference drawn in the absence of the very document upon which such inference was required to be founded.

19. Furthermore, the appellant has not produced the driver's driving licence. Additionally, neither any official from the licensing authority or the District Transport Office has been examined, nor any extract from the relevant licence register has been brought on record. Equally, no verification report from the competent licensing authority has been proved. In the absence of such material, the allegation that the driver did not possess a valid and effective licence remains unsubstantiated and not proven in the eyes of law.

20. It is equally significant to note that the charge-sheet merely identifies Mantu Prasad Dutta as the driver of the offending vehicle. Such identification, by itself, does not establish that the driver had no licence. Nor does it establish that any licence he held was fake, expired, or otherwise did not authorise him to drive the vehicle in question. The distinction is material because the burden resting upon the insurer is not discharged by demonstrating a possibility of breach; what is required is proof of the breach itself.

21. In this context, the Tribunal's finding is significant. A specific issue (Issue IV) was framed regarding the validity of the driving licence and, upon appreciation of the evidence, the Tribunal found that the insurer had failed to produce material in support of its allegation. Moreover, nothing has been brought before this Court which would warrant a departure from that finding.

22. Learned counsel for the appellant has, nevertheless, relied on the dictum of the Hon'ble Apex Court in ***Amrit Paul Singh v. TATA AIG General Insurance Co. Ltd., (2018) 7 SCC 558.*** Insofar as the said decision is concerned, the factual foundation upon which the Hon'ble Supreme Court proceeded cannot be lost sight of. There, the absence of a permit was affirmatively established by the material available on record. It was in that factual setting that the consequences of the breach were considered.

23. The position in the present case is materially different. Here, the appellant has alleged absence of a valid and effective driving licence, but has failed to establish the allegation by cogent evidence. Thus, ***Amrit Paul Singh (Supra)*** does not dilute the principle enunciated in ***Swaran Singh (Supra)*** that the insurer must first prove the breach on which it seeks to avoid liability.

24. Put differently, the distinction between the aforesaid decisions lies not in the legal principle governing the burden of proof, but in the evidentiary foundation available in the respective cases. Where breach is affirmatively established, the consequences flowing from such breach may follow in accordance with law.

Where, however, the alleged breach itself remains unproved, the insurer cannot be permitted to avoid its statutory obligation merely on the strength of an allegation.

25. Having regard to the aforesaid discussion, this Court is of the considered view that the appellant has failed to establish that the driver was not holding a valid and effective driving licence at the time of the accident. Consequently, the foundational fact necessary for invoking the defence under the policy conditions has not been established.

26. The plea for a direction to pay and recover must, therefore, fail. Point No. (I) is accordingly answered against the appellant-insurer.

27. That brings us to the second question, namely, whether the compensation awarded by the Tribunal represents just and reasonable compensation in the facts and circumstances of the present case.

28. The Tribunal assessed the deceased's monthly income at Rs.20,777/- based on the original pay slip marked Exhibit 1. The Tribunal took the age of the deceased as 54 years. Having regard to the number of dependants, one-fourth was deducted towards personal and living expenses and a multiplier of 11 was applied. Towards the conventional heads, the Tribunal awarded Rs. 2,000/- towards funeral expenses, Rs. 2,500/- towards loss of estate and Rs. 5,000/- towards consortium. Further, no addition was made towards future prospects.

29. As to monthly income, Exhibit 1 supports the figure of Rs.20,777/-. Accordingly, there is no reason to interfere with the

Tribunal's finding on this aspect. Likewise, the age of the deceased, as reflected in the post-mortem report, was 54 years, which also has not been disputed by either of the parties. Accordingly, the application of multiplier 11 is in accordance with the principles laid down in ***Sarla Verma (Supra)*.**

30. Equally, the deceased left behind his widow and three children. In view of the number of dependants, the deduction of one-fourth towards personal and living expenses also conforms to the principles laid down in ***Sarla Verma (Supra)***.

31. However, the Tribunal's computation contains one material omission. The deceased was a salaried Government employee and was 54 years of age. Therefore, in terms of the law laid down in ***Pranay Sethi (Supra)***, the Tribunal must add 15% for future prospects.

32. Accordingly, the loss of dependency would have to be recalculated. The deceased's annual income, based on a monthly income of Rs. 20,777/-, comes to Rs. 2,49,324/-. Adding 15% for future prospects, the annual income becomes Rs. 2,86,723/-. After deducting one-fourth towards personal and living expenses, the annual contribution to the family comes to Rs. 2,15,042/-. Applying the multiplier of 11, the loss of dependency is thus computed at Rs. 23,65,462/-.

33. In addition to the aforesaid correction, the award under the conventional heads also requires reconsideration. The Tribunal awarded a consolidated amount of Rs. 5,000/- towards consortium. The Hon'ble Supreme Court has since clarified the law on this aspect in ***Magma General Insurance Co. Ltd. (Supra)***.

34. In terms of the aforesaid decision, consortium is not confined to the spouse alone. Each eligible claimant is entitled to the benefit recognised under the law. In the present case, there are four claimants, namely, the widow and three children of the deceased. Accordingly, consortium at Rs. 40,000/- each would amount to Rs. 1,60,000/-.

35. Furthermore, a sum of Rs. 15,000/- towards funeral expenses and a further sum of Rs. 15,000/- towards loss of estate would be appropriate. Once consortium is awarded in accordance with the law laid down in ***Magma General Insurance (supra)***, no separate amount under the head of loss of love and affection is called for.

36. The compensation is, therefore, recalculated as follows:

Loss of dependency : Rs. 23,65,462/-
Consortium : Rs. 1,60,000/-
Funeral expenses : Rs. 15,000/-
Loss of estate : Rs. 15,000/-
Total : Rs. 25,55,462/-

37. The total compensation thus comes to Rs. 25,55,462/-. The same is rounded off to **Rs. 25,55,500/-**

38. At this stage, it is pertinent to observe that the claimants' failure to prefer any cross-objection does not preclude this Court from examining whether the compensation awarded is just compensation. In ***Nagappa v. Gurudayal Singh, (2003) 2 SCC 274***, the Hon'ble Supreme Court emphasised that the Tribunal's duty is to award just compensation and that the award is not confined merely to the amount claimed by the claimant.

39. The aforesaid principle has also been reiterated in ***Surekha v. Santosh, (2021) 16 SCC 467***, wherein the Hon'ble Supreme Court recognised that the appellate court, while considering an appeal arising from a motor accident claim, can ensure that the claimant receives just compensation even in the absence of a formal appeal or cross-objection.

40. Viewed in this perspective, the absence of a cross-objection cannot, by itself, preclude this Court from correcting an apparent omission in the computation, when the statutory mandate is to ensure that just compensation is awarded having regard to the object and purpose of the legislation.

41. In view of the foregoing, Point No. (II) is answered in favour of the claimants.

42. The claimants shall be entitled to an enhanced compensation of **Rs. 25,55,500/-** in place of Rs. 20,16,456/-, together with interest at the rate of 6% per annum from the filing of the claim petition till payment, after giving due credit for the amount already paid or deposited, including the interim compensation of Rs. 50,000/- under S. 140 of the Act, the statutory deposit, if any, and any other amount paid during the pendency of the claim or of this appeal.

43. The appellant-insurer shall deposit the amount payable, after such adjustment, before the Registry of this court within a period of eight weeks from today.

44. Upon such deposit, the Registry of this court shall permit the claimants to withdraw the amount in accordance with law and in accordance with the directions contained in the award regarding the shares of the minor claimants.

45. Consequently, the appeal stands disposed of in the above terms.

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

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

September 16th, 2026

N.A.F.R.

APK/VK

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