(2026: JHHC: 21172)

IN THE HIGH COURT OF JHARKHAND AT RANCHI

M.A. No. 143 of 2013

1. Smt. Amita Devi, widow of Late Malchand Murmu,
2. Aashish Murmu, son of Late Malchand Murmu,
3. Smt. Charki Devi, W/o Late Surju Murmu @ Surju Manjhi,

   The Appellant No. 2 is presently minor as such, he is being represented through his mother and natural guardian, Smt. Amita Devi, the Appellant No. 1 herein.

   All residing at Village: Telaiya, Post: Vishunpur, P.S. Pirtand, District Giridih ... … Appellants

Versus

1(a) Dilip Kumar Samanta, husband of late Sumita Samanta,
1(b) Rahul Samanta, Son of Late Sumita Samanta,
1(c) Sudeshna Samanta, daughter of late Sumita Samanta,
All residents of Samanta house, Court Road, Giridih, P.O. & P.S. Giridih, District Giridih (Jharkhand)

2. Prakash Rana, Son of Late K. Rana (Driver of T.D.V. Bus No. JH 11 A 2955) resident of Kumarpur, Post and P.S Asansol, District Burswan (West Bengal)

3. The New India Assurance Company Limited (Insurer of T.D.V. Bus No. JH 11 A 2955) through the Branch Manager, the New India Assurance Company Limited, Giridih Branch, P.O and P.S. Giridih, District Giridh

... Respondents

With

M.A. No. 110 of 2013

1(a) Dilip Kumar Samanta, husband of late Sumita Samanta,
1(b) Rahul Samanta, Son of Late Sumita Samanta,
1(c) Sudeshna Samanta, daughter of late Sumita Samanta,
All residents of Samanta house, Court Road, Giridih, P.O. & P.S. Giridih, District Giridih (Jharkhand) ... … Appellants

Versus

1. Smt. Amita Devi, widow of Late Malchand Murmu,
2. Aashish Murmu, son of Late Malchand Murmu,
The applicant-respondent no. 2 is minor represented through his mother / natural guardian, Smt. Amita Devi
3. Smt. Charki Devi, W/o Late Surju Murmu @ SurjuManjhi,
All residents of Villag: Telaiya, P.O: Vishunpur, P.S. Pirtand, District Giridih

…. ….. (Claimants)

4. Prakash Rana, Son of Late K. Rana, resident of Kumarpur, P.O and P.S Asansol, District Burswan (West Bengal) (Driver of T.D.V. Bus No. JH 11 A 2955)
5. The New India Assurance Co. Ltd. through the Branch Manager, Court Road, P.O, P.S. and District Giridih (Insurer of T.D.V. Bus No. JH 11 A 2955) ... …. Respondents

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CORAM: HON'BLE THE CHIEF JUSTICE

M.A. No. 143 of 2013

For the Appellants: Mr Arvind Kumar Lall, Advocate
For the Respondents: Mr Alok Lal, Advocate
Mr Santosh Kumar, Advocate
Mr Sandeep Verma, Advocate

<u>M.A. No. 110 of 213</u>

For the Appellants: Mr Sandeep Verma, Advocate
For the Respondents: Mr Arvind Kumar Lall, Advocate
Mr Alok Lall, Advocate
Mr Santosh Kumar, Advocate

<u>25/Dated: 17.07.2026</u>

1. Heard the learned counsel for the parties.

2. Learned counsel for the parties agree that both these appeals, which are even otherwise tagged together, can be disposed of by a common judgment and order.

3. Both appeals challenge the judgment and award dated 05th April, 2013, passed by the Motor Vehicle Accident Claims Tribunal, Giridih, in M.V. Claim Case No. 26 of 2010.

4. M.A. 143 of 2013 is instituted by the claimants seeking enhancement of compensation and M.A. 110 of 2013 is instituted by the owner of the offending vehicle challenging the direction for 'Pay and Recovery'.

5. Mr. Arvind Kumar Lall, the learned counsel for the appellants in M.A. No. 143 of 2013 submitted that the salary/income of the deceased Malchand Murmu should have been taken at least Rs. 6,000/- per month based on the evidence on record. He further submitted that no provision has been made for future prospects and consortium. He submitted that the compensation towards funeral and loss of estate is also contrary to the law laid down by the Hon'ble Supreme Court in the cases of ***Sarla Verma (Smt) and others versus Delhi Transport Corporation and another, (2009) 6 SCC 121*** and ***National Insurance Company Ltd versus Pranay Sethi & Ors., (2017) 16 SCC 680.***

6. Mr Sandeep Verma, the learned counsel for the appellant in M.A. No. 110 of 2013 submitted that in terms of the pleadings in the claim petition as also the evidence of the wife of the deceased Malchand Murmu, the

deceased and some others were travelling on the rooftop of the offending vehicle (bus). He submitted that there was no evidence about the deceased having purchased any ticket for such travel.

7. Mr Verma submitted that Section 123(2) of the M.V. Act, 1988 provides for a legislative injunction against any person travelling on the running board, the top, or the bonnet of a motor vehicle. He therefore submitted that this was an express breach of Section 123(2) of the M.V. Act, 1988, and accordingly, there was no question of awarding any compensation to the dependents of the deceased Malchand Murmu. He relied on a Division Bench decision of the Calcutta High Court in the case of **Smt. Upashi Bala Devi versus The Oriental Insurance Company Ltd. [2017 (4) All MR (Journal) 1].**

8. Mr Sandeep Verma has also referred to the appellant's application under Order 41 Rule 27 of the CPC and read out the evidence of the claimant's third witness Ganesh Murumu. He submits that this evidence clearly shows that this witness, along with the deceased Malchand Murmu, was travelling on the rooftop and such travelling was in fact the cause for the accident and the demise of Malchand Murmu.

9. Mr Alok Lal submitted that there was a clear case of breach of the terms of the insurance policy and therefore, the Tribunal was justified in ordering 'pay and recovery'. He relied on the decisions in **National Insurance Company Ltd. versus Most. Budhani Kisku [2008 (1) JCR 366**] and **Branch Manager, the New India Assurance Company Ltd. versus Babita Devi [M.A. No. 610 of 2016** decided on **02.04.2025]** to defend the order for 'pay and recovery'.

10. The rival contentions now fall for my determination.

11. Insofar as the case no. M.A. No. 110 of 2023 is concerned, though, it is true that there is evidence about the deceased Malchand Murmu travelling

on the rooftop of the offending vehicle (bus), reference is necessary to the evidence of Ganesh Murmu (CW-3), which was relied upon and even emphasized by Mr Sandeep Verma, the learned counsel for the owner of the offending vehicle.

12. Ganesh Murmu, in his evidence, has categorically stated that he, along with some others, including the deceased Malchand Murmu, was travelling on the rooftop at the express instruction of the vehicle driver. There is further evidence that the vehicle was being driven rashly and negligently, and despite pleas to reduce speed, the driver continued to do so.

13. In the case of **Smt. Upashi Bala Devi (Supra),** the facts were quite different. The victim, travelling on the roof of the bus, dashed against the check-post gate and hit the bamboo gate, sustaining a head injury and dying. Further, and most crucially, there was no evidence that the conductor or the driver had asked the victim to board the roof of the bus. Even the driver's rash and negligent driving was not established.

14. In this case, there is clear evidence, which was neither challenged nor in any way diluted during cross-examination, that the deceased was on the roof of the offending vehicle on the express instruction of the driver of the vehicle on which the deceased was travelling. In addition, there was evidence that the bus was being driven in a rash and negligent manner. Therefore, on the facts, **Smt. Upashi Bala Devi (Supra)** is distinguishable.

15. Besides, in this case, the owner of the offending vehicle has filed a written statement in response to the claim petition, which did not even address the plea now sought to be raised in this appeal. Mr Verma, however, submitted that such a plea was taken by the Insurance Company in its written statement. The Insurance Company's plea was in the context of seeking a 'pay and recovery' order and not to avoid all liability.

16. The argument about an alleged breach of Section 123(2) of the MV Act is not a sufficient ground to deny compensation to the claimants or to interfere with the direction for pay and recovery. There is no evidence that such alleged breach was responsible for the accident or had any close nexus with it. The fact that the deceased acted under the driver's express instructions also cannot be overlooked.

17. The wife of the deceased deposed that there was no ticket for the deceased to travel on the rooftop. However, this statement must be construed in context during cross-examination. Firstly, the wife was neither on the bus nor an eyewitness to the accident. There was no basis for her to know whether her husband had purchased a ticket. Witness Ganesh Murmu, who was travelling with the deceased on the rooftop, was extensively cross-examined. However, no suggestion was put to him that either he or the deceased, or both, had not purchased any tickets. On the contrary, this witness deposed that it was on the express instruction of the driver that he, along with the deceased, was travelling on the rooftop.

18. Considering the above circumstances and the evidence on record, coupled with some of the decisions cited by Mr Alok Lal, there is no question of disturbing the 'pay and recovery' order made by the Tribunal in the impugned judgment and Award. Consequently, case no. M.A. No. 110 of 2013 is liable to be dismissed and is hereby dismissed.

19. Insofar as the case no. In M.A. 143 of 2013, there is no evidence that the deceased's income was Rs. 6,000/- per month at the time of the accident. Since there was evidence about the deceased being a skilled labourer, the Tribunal has, based upon the Minimum Wage Notification, assessed his monthly income at Rs. 4,800/- i.e., Rs. 160/- per day. There is no reason to disturb this finding.

20. The Tribunal correctly determined the deceased's yearly income at Rs. 57,600/-. However, the Tribunal failed to make any addition towards future prospects. An addition of at least 40% was required, given the law laid down in **Sarla Verma and Pranay Setty (Supra).** This means that an amount of Rs. 23,040/- should have been added to the annual income of Rs. 57,600/-. The annual income, for purposes of determining dependency, should therefore be taken at Rs. 80,640/-.

21. Out of the above amount, 1/3rd will have to be deducted as the expenses which the deceased would have incurred on himself. This means that the annual income for determining the dependency compensation will have to be taken at Rs. 53,520/-.

22. The deceased was aged 22 years at the time of the accident. Therefore, the multiplier would be 18 under the law laid down in **Sarla Verma and Pranay Setty (Supra).** The compensation towards dependency would therefore come to Rs. 9,63,360/-.

23. To this amount, compensation towards consortium of Rs. 40,000/- to each of the claimants, i.e., Rs. 1,20,000/- will have to be added. Besides, the claimants will be entitled to compensation of Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards loss of estate. The total compensation would therefore come to Rs. 11,13,360/-.

24. Interest of 9% awarded in this matter is maintained in the peculiar facts and circumstances of the present case.

25. Accordingly, M.A. No. 143 of 2013 is partly allowed, and the compensation amount is enhanced from Rs. 6,41,200/- to Rs. 11,13,360/-. The remaining directions in the award are maintained.

26. The Respondent Insurance Company has already paid the amount awarded by the impugned Award. It must now pay the balance compensation, together with interest, by depositing the same in this Court within six weeks from today, after giving due notice to the learned counsel for the claimants. Once the amount is deposited, the claimant shall be entitled to withdraw the same by furnishing his identity and bank details.

27. The Registry is directed to transfer the amount directly into the claimant's bank account. Under no circumstances is any transfer permitted other than through the regular banking channels.

28. Thus, MA No. 110/2013 is dismissed, and MA No. 143/2013 is partly allowed in the above terms.

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

July17, 2026

N.A.F.R

Ranjeet/R.Kr./Cp.2
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