IN THE HIGH COURT OF JHARKHAND AT RANCHI

M.A No. 181 of 2017

Yasoda Devi @ Sushila Devi, W/o Kashi Prasad Sahu, R/o Village Singhani, P.O. Pathalgadda, P.S. Itkhori, District Chatra

... ... Claimant/Appellant

Versus

1. Kailash Kumar Pandey, S/o Sri Pramodh Kumar Pandey, R/o Hurmur, P.O. & P.S. Tutilawa & Simariya, District Chatra
2. The Oriental Insurance Company Ltd., Hazaribagh, P.O, P.S & District Hazaribag … … ...Respondents/ Opp Parties

WITH

M.A No. 182 of 2017

Vikash Kumar Keshri @ Vikash Kumar, S/o Sri Suresh Keshri, R/o Village - Piska Nagari, P.O. Piska Nagri, P.S. Ratu, District Ranchi

... ... Claimant/Appellant

Versus

1. Kailash Kumar Pandey, S/o Sri Pramodh Kumar Pandey, R/o Hurmur, P.O. & P.S. Tutilawa & Simariya, District Chatra
2. The Oriental Insurance Company Ltd., Hazaribagh, P.O, P.S & District Hazaribag … … ...Respondents/ Opp Parties

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CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellants: Mr Vijay Kumar Sharma, Advocate
For the Respondents: Mr. G.C. Jha, Advocate
Mr Abhay Kumar Mishra, Advocate

Reserved on: 07.08.2026 **Pronounced on:11.08.2026**

1. Heard learned counsel for the parties.

2. M.A. No. 181 of 2017 and M.A. No. 182 of 2017 by the respective appellants (original claimants) challenge the common Judgment and Award dated 28.11.2016 of the Motor Vehicles Accident Claims Tribunal (Tribunal) in Claim Case No. 10 of 2009 and Claim Case No. 11 of 2009, whereby the Tribunal awarded a total compensation of Rs. 67,500/- to Vikash Kumar Keshri and Rs. 37,600/- to Sushila Devi @ Yashoda Devi with interest @ 7.5% per annum from the date of the application till the realisation. The appellants contend that the compensation determined is too meagre and not "just compensation".

3. At the outset, it is apposite to state that both the claim cases, i.e. Claim Case No. 10 of 2009 and Claim Case No. 11 of 2009, arose out of the same accident that occurred on 08.10.2008 and were, therefore, tried together and disposed of by a common judgment as mentioned herein-above.

4. The appellants contend that the compensation granted to the original claimants of this case is erroneous and bad in law and, accordingly, is liable to be set aside by this Court.

5. Learned counsel for the appellants contended that the Tribunal failed to make any addition towards loss of future earnings; failed to appreciate that on account of functional disability the appellants suffered permanent impairment in their ability to earn; erred in making no adequate award towards future medical expenses and further erred in attributing 50% contributory negligence merely because three persons were riding the motorcycle. It was submitted that the compensation awarded is wholly inadequate and contrary to the principles of just compensation.

6. The learned counsel for the appellants relied upon **Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343, Chandra Alias Chanda Chandraram v. Mukesh Kumar Yadav, (2022) 1 SCC 198, Dinesh Kumar J. v. National Insurance Co. Ltd., (2018) 1 SCC 750, Mohammed Siddique v. National Insurance Co. Ltd., National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 and Sarla Verma v. DTC, (2009) 6 SCC 121.**

7. Learned counsel appearing for the respondent Insurance Company submitted that the appellants failed to produce any documentary evidence of income or of the functional impact of the disability; that three persons were riding the motorcycle in clear violation of the statutory provisions and that in the absence of cogent evidence of actual pecuniary loss the award of the Tribunal is fair and requires no interference. He further submitted that the Tribunal was justified in declining compensation under the head of loss of future earnings and in attributing contributory negligence.

8. Based on the rival arguments and the material on record, the following points for determination arise in these appeals: –

(i) Whether the impugned award is vitiated for not considering the various aspects of functional disability and for erroneously attributing contributory negligence to the claimants?

(ii) Whether the Tribunal has awarded "just compensation" in the facts and circumstances of the present cases?

9. Insofar as the first point for determination is concerned, reference can usefully be made to the decision of the **Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar (supra)**, in which the Hon'ble Supreme Court held that emphasis should not be merely on the percentage of medical disability, but on that of functional disability.

10. In both the cases, the Tribunal, quite cursorily, refused to go into the aspects of functional disability by simply observing that the claimants had failed to furnish documents to prove their income and that there was no evidence to show that they were unable to discharge their earlier duties or to lead a normal life. This approach is not correct.

11. In Claim Case No. 10 of 2009, preferred by Vikash Kumar Keshri, evidence was led through Yashoda Devi and Vikash Kumar Keshri. In Claim Case No. 11 of 2009, preferred by Yashoda Devi, evidence was led through Yashoda Devi, Vijay Prasad Keshri, Vikash Kumar Keshri and Kashi Sahu. The aforesaid witnesses have consistently deposed on the material aspects of the occurrence, the nature of injuries sustained and the consequential disability, and their versions in both the claim cases are substantially consistent with each other.

12. Yashoda Devi deposed that on the fateful day she, Vikash Kumar Keshri and Ajay Kumar Keshri were travelling on the motorcycle when the tractor, driven rashly and negligently, dashed against them. She stated that she sustained serious injuries, remained under treatment for about one year, and continues to suffer disability. She further deposed that she used to earn approximately Rs. 6,000/- per month from agriculture and shop-keeping. In her cross-examination, she admitted that three persons were riding the motorcycle and that she did not possess a licence for the shop, but she withstood the cross-examination on the core facts of the accident, the nature of injuries and the period of treatment. Moreover, no suggestion was put to her that the accident did not occur or that the injuries were not suffered in the manner alleged by her.

13. Vijay Prasad Keshri supported the version of the accident and the earnings of both the claimants. Though he admitted in cross-examination that he had not himself witnessed the occurrence and that no documentary proof of income had been produced, his evidence on the factum of the accident and the subsequent disability remained unshaken on material particulars.

14. Vikash Kumar Keshri himself entered the witness box and reiterated that Ajay Kumar Keshri was driving the motorcycle, that he and Yashoda Devi were pillion riders, and that the tractor dashed against them. He further stated that he remained unconscious for about 18 hours and was bed-ridden for nearly 12 to 14 months. He claimed monthly earnings of Rs. 6,000/- to Rs. 7,000/- from his business. In cross-examination, he admitted that riding three persons on a motorcycle is contrary to law and that he had no documentary proof of income. However, his testimony remained consistent on the material aspects of the occurrence, the injuries sustained and the prolonged period of treatment.

15. Kashi Sahu also supported the claimants' version of the accident. Though he denied having witnessed the occurrence, his evidence did not dilute the consistent testimony of the injured persons themselves.

16. The documentary evidence on record comprises the FIR (Ext. 1), the charge-sheet (Ext. 2), the disability certificates (Exts. 3 and 4), the discharge summaries (Exts. X and X/1), the insurance policy papers (Ext. X/2), the registration certificate of the tractor (Ext. X/3), and the large number of cash memos relating to medical treatment (Exts. 5 to 5/158). The disability certificate of Vikash Kumar Keshri (Ext. 3) records ankylosed right knee, shortening of the right lower limb and visual disability assessed at 60%. The corresponding discharge summary corroborates the seriousness of the injuries.

17. The disability certificate of Sushila Devi @ Yashoda Devi (Ext. 4) records her physical disability at 50%. Her discharge summary records a fracture of the femoral condyle of the left femur, whereas the disability certificate records a fracture of the right pelvis and a fracture around the left knee, resulting in post-traumatic osteoarthritis and residual weakness.

18. This apparent variance between the discharge summary and the disability certificate does not, in the opinion of this Court, affect the overall reliability of the medical evidence. The discharge summary records the condition of the claimant at the time of hospitalisation, whereas the disability certificate reflects the residual condition assessed at a later stage. It is not uncommon for medical documents prepared at different points of time and for different purposes to contain overlapping but not identical descriptions of the injuries. Significantly, neither document was challenged in cross-examination, nor was any suggestion made that the injuries recorded therein were fabricated. Read together with the oral evidence, both documents consistently establish that the claimant suffered serious and permanent injuries involving the pelvic and knee region.

19. At this stage, it is pertinent to mention that though the appellants may not have produced income-tax returns or formal land revenue records, the consistent oral evidence regarding their occupation and approximate monthly earnings cannot be discarded solely on that ground. The law in this regard is no longer res integra. In **Chandra Alias Chanda Chandraram (supra)**, the Hon'ble Supreme Court has held that, in the absence of documentary evidence regarding the monthly income of the deceased/claimants, some amount of guesswork is inevitable, and the income has to be assessed on the basis of the realities of the facts and circumstances brought on record before the Tribunal.

20. In the present case, the claimants have consistently deposed about their earnings, and their testimony has remained substantially unshaken in cross-examination. The absence of documentary evidence, by itself, could not have been a ground for discarding the income claimed by the claimants altogether. The Tribunal, therefore, in the considered view of this Court, was not justified in rejecting the income claim in its entirety, without making a reasonable assessment of the income based on the evidence and circumstances available on record.

21. The aforesaid approach also finds support from the recent pronouncement of the Hon'ble Supreme Court in **Shishupal @ Shish Ram v. Surjeet, 2026 INSC 634**, wherein the Hon'ble Apex Court recognised the economic value of work and services which, by their very nature, may not be reflected through conventional documentary proof. While the said decision arose in the context of domestic and caregiving services rendered by a homemaker, the underlying principle is of wider relevance, as the absence of formal documentation, by itself, cannot be a ground to disregard the economic value of work performed. The assessment must, therefore, be founded upon the nature of the work, the surrounding circumstances and the evidence available on record.

22. In the present case, the consistent oral evidence regarding the agricultural and business activities of the appellants, coupled with the nature of their occupations, was sufficient to warrant a reasonable assessment of their income rather than its wholesale rejection.

23. Having regard to the nature of their occupations, the oral evidence regarding their earnings, the absence of documentary proof, and the prevailing economic circumstances, this Court assesses the monthly income of Vikash Kumar Keshri at Rs. 6,500/- and that of Sushila Devi @ Yashoda Devi at Rs. 5,500/-.

24. Moving forward, after carefully perusing the medical evidence on record, this Court finds that the Tribunal has failed to appreciate the distinction between the percentage of permanent medical disability and the resultant functional disability of the claimants. *The assessment of functional disability cannot be made merely by adopting the percentage mentioned in the disability certificate. What is required to be examined is the actual effect of the permanent disability upon the earning capacity of the claimant, having regard to his or her age, avocation, nature of work and the activities which the claimant was required to perform in the course* *of such occupation.* **(See: M. Paramesh v. VRL Logistics Ltd. & Anr., 2026 INSC 655; Shankar Dutt v. United India Insurance Co. Ltd., 2026 INSC 656 and R. Halle v. Reliance General Insurance Co. Ltd., 2026 SCC OnLine SC 433.)**

25. In the case of the Vikash Kumar Keshri @ Vikash Kumar, the medical evidence discloses 60% permanent disability, accompanied by ankylosis of the knee, shortening of the affected limb and visual impairment. The claimant was a young person engaged in the business of buying and selling agricultural produce, an occupation which necessarily required substantial physical mobility, including standing, walking, movement in agricultural markets, handling and supervision of agricultural produce and attending to transactions at different places.

26. The disability suffered by the claimant is, therefore, not confined to a particular part of the body in a manner having only a limited bearing upon his earning capacity. The ankylosed knee and shortening of the limb materially impair mobility and the ability to undertake prolonged physical activity, while the visual impairment further affects his capacity to perform the activities incidental to his occupation. Viewed in the backdrop of the nature of his avocation, the functional consequences of the injuries are substantially more serious than what would appear from a mere arithmetical consideration of the percentage of medical disability. In the considered view of this Court, the claimant's functional disability is assessed at 70%.

27. Similarly, in the case of Yasoda Devi @ Sushila Devi, although the medical evidence assesses the permanent disability at 50%, the nature of the injuries and their enduring consequences assume significance while determining the loss of earning capacity. The claimant had suffered fractures of the pelvis and knee, which have resulted in chronic osteoarthritis and residual weakness. The claimant was engaged not only in agricultural labour but also in shop-keeping. The former is an occupation involving prolonged standing and walking, bending, squatting, lifting and carrying, all of which require effective functioning of the lower limbs and pelvis. The residual weakness and chronic osteoarthritic changes in the knee, therefore, have a direct and substantial bearing upon her capacity to undertake the physical activities which formed part of her pre-accident occupation. Even in relation to shop-keeping, the residual physical limitations cannot be regarded as wholly inconsequential. Having regard to the nature of the injuries, the permanent residual effects thereof, the age and the avocation of the claimant, this Court is of the considered view that the functional disability of the claimant is appropriately assessed at 60%.

28. The first limb of the first point for determination is answered accordingly.

29. Insofar as the finding of contributory negligence is concerned, the Tribunal held that the claimants and the driver of the motorcycle contributed to the extent of 50% merely because three persons were riding the motorcycle. The law in this regard is no longer res integra. In **Dinesh Kumar J. (supra) and Mohammed Siddique**

(supra) the Hon'ble Supreme Court has clearly held that mere violation of a statutory provision, including the presence of two pillion riders, cannot by itself lead to a finding of contributory negligence. There must be a causal connection between the presence of three persons on the motorcycle and the cause of the accident or the aggravation of its consequences. Most importantly, in the case at hand, no evidence whatsoever has been led by the Insurance Company to establish any such causal link. Accordingly, the finding of 50% contributory negligence is, therefore, erroneous and is set aside.

30. The second point for determination concerns the quantum of just compensation. The Tribunal accepted the medical expenses of Rs. 1,14,836/- for Vikash Kumar Keshri and Rs. 55,149/- for Sushila Devi @ Yashoda Devi based on the cash memos, but halved those amounts on account of the erroneous finding of contributory negligence. It awarded only a token sum of Rs. 10,000/- towards pain and suffering and nothing towards special diet, future medical expenses or loss of amenities.

31. On a careful re-appraisal of the evidence, the monthly income of Vikash Kumar Keshri is assessed at Rs. 6,500/- and that of Sushila Devi @ Yashoda Devi at Rs. 5,500/-. An addition of 40% towards future prospects is due in the case of Vikash Kumar Keshri (aged 26 years at the time of the accident) and 40% in the case of Sushila Devi @ Yashoda Devi (aged about 38 years) in terms of the dictum of **Pranay Sethi (supra)**. The applicable multipliers are 17 and 15 respectively in terms of the judgment of **Sarla Verma (supra).**

32. The compensation towards loss of future earnings is, therefore, worked out as under:

<u>For Vikash Kumar Keshri:</u>

Annual income Rs. 78,000/- + 40% = Rs. 1,09,200/- × multiplier 17 × functional disability 70 % **= Rs. 12,99,480/-.**

<u>For Sushila Devi @ Yashoda Devi:</u>

Annual income Rs. 66,000/- + 40% = Rs. 92,400/- × multiplier 15 × functional disability 60% **= Rs. 8,31,600/-.**

33. Towards medical expenses already incurred, the amounts of Rs. 1,14,836/- and Rs. 55,149/- are maintained in full. In addition, considering the prolonged period of treatment lasting nearly one year, a sum of Rs. 30,000/- each is awarded towards special diet, conveyance and miscellaneous incidental expenses. Additionally, having regard to the permanent nature of the injuries and the continuing medical needs reflected from the medical evidence on record, a further sum of Rs. 40,000/- each is awarded towards future medical expenses to both the Appellants.

34. Under the non-pecuniary heads, compensation for pain, suffering and trauma is enhanced to Rs. 75,000/- for each of the appellants having regard to the prolonged hospitalisation, the surgical interventions and the residual permanent disability. Towards loss of amenities of life, a further sum of Rs. 50,000/- is awarded to each. Towards loss of expectation of life, a sum of Rs. 40,000/- is also awarded to each of the appellants.

35. Thus, under the heading of pecuniary damages, Vikash Kumar Keshri will have to be paid a total of Rs. 14,84,316/- and Sushila Devi @ Yashoda Devi a total of Rs. 9,56,749/-. Under the non-pecuniary damages each of the appellants would be entitled to Rs. 1,65,000/-.

36. In all, therefore, Vikash Kumar Keshri would be entitled to compensation of Rs. 16,49,316/- which is rounded off to Rs. 16,50,000/-, and Sushila Devi @ Yashoda Devi would be entitled to compensation of Rs. 11,21,749/- which is rounded off to Rs. 11,25,000/-.

37. The second point which arises for determination is determined accordingly.

38. The Tribunal's award of interest at 7.5% per annum warrants no reduction, as no justification for interference exists. Furthermore, interest shall run from the date of institution of the respective claim petitions, as correctly directed by the Tribunal.

39. These appeals are accordingly allowed. The compensation amounts are enhanced from Rs. 67,500/- to Rs. 16,50,000/- in the case of Vikash Kumar Keshri and from Rs. 37,600/- to Rs. 11,25,000/- in the case of Sushila Devi @ Yashoda Devi, with interest @ 7.5% per annum from the date of the respective claim petitions till the actual payment of the amounts.

40. The 2^{nd} respondent is now directed to deposit the enhanced compensation amounts in this Court within six weeks from today after giving due intimation to the learned counsel for the appellants.

41. Once the amounts are deposited, the Registry is directed to permit the respective appellants to withdraw the same by transferring them into their bank accounts. Under no circumstances should the transfer be made otherwise than through regular banking channels.

42. The learned counsel for the appellants shall provide the identity and bank details of the respective appellants so that the transfer of the compensation can be effected at the earliest.

43. The appeals are allowed and disposed of in the above terms, without any order for costs.

44. IAs, if any, pending in these appeals, will not survive and are disposed of.

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

August 11, 2026

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