IN THE HIGH COURT OF JHARKHAND AT RANCHI

Miscellaneous Appeal No. 269 of 2024

Chola Mandalam MS General Insurance Co. Ltd. (wrongly spelled as Chhola) Office at Tinplate Chowk, P.O + P.S Golmuri, Jamshedpur represented through its Deputy Manager - Vishal Kumar Sharma s/o Mr. B. Sharma, aged about 34 years, resident of C/o M/s Cholamandalam MS General Insurance Co. Ltd., Shri Krishna Mathura Complex, IIIrd Floor, Opp. Allahabad Bank, Circular Road, P.O. & P.S. Lalpur, Dist. Ranchi. ... Appellant

Versus

1) Nisha Devi w/o Late Mukesh Kumar Choudhary @ Chowdhary,
2) Kavya Choudhary d/o Late Mukesh Kumar Choudhary @ Chowdhary,
3) Divya Kumari Choudhary d/o Late Mukesh Kumar Choudhary @ Chowdhary,
4) Shusant Kumar Choudhary s/o Late Mukesh Kumar Choudhary @ Chowdhary,
5) Rishabh Choudhary @ Chowdhary s/o Late Mukesh Kumar Choudhary @ Chowdhary
6) Pratima Devi wife of Late Shashinath Choudhary @ Chowdhary, aged about 60 years

Nos. 2 to 5 are minors and they are represented by their natural guardian i.e No. 1 who is mother of them.

All are permanent resident of 14/C, Line no.9, Hime Pipe Bhuyadih Kalyan Nagar, P.O., P.S. & Town - Jamshedpur, District East Singhbhum

7) Nitesh Kumar Choudhary Son of S.N. Choudhary, Resident of 14C, Hume Pipe Kalyan Nagar Agrico, P.O., P.S. Town- Jamshedpur, District East Singhbhum
8) Tata AIG General Insurance Co. Ltd., office at Voltas House, P.O., P.S. Bistupur, Town- Jamshedpur, District East Singhbhum
9) Ranju Devi, wife of Ranjit Ranjan, R/o Qtr. no. 39/382, UCIL Colony, P.O & P.S. Jadugora, Jamshedpur, District East Singhbhum

... Respondents

<u>CORAM: HON'BLE THE CHIEF JUSTICE</u>

For the Appellant: Mr. Ashutosh Anand, Advocate
For Resp. Nos. 1-6: Mr. Amaresh Kumar, Advocate
Ms. Riya Raj, Advocate

Reserved on: 29.08.2026 **Pronounced on: 03/09/2026**

1. Heard Mr Ashutosh Anand, learned counsel for the appellant-Insurance Company, and Mr Amaresh Kumar, learned counsel for the claimants.

2. This Miscellaneous Appeal by Chola Mandalam MS General Insurance Company Limited, the insurer of trailer No. NL-01AD-5697, is directed against the Judgment and Award dated 30.03.2024 passed by the Claims Tribunal, Jamshedpur, in Motor Accident Claim Case No. 196 of 2022, whereby the appellant was directed to pay compensation of Rs. 22,16,475/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition, i.e. 30.09.2022.

3. Assailing the award, Mr Anand submitted that the appellant is principally aggrieved on two counts. First, according to him, the deceased himself was driving trailer No. JH-05BK-4041 without a valid driving licence and, therefore, the appellant could not have been fastened with liability. Secondly, it was submitted that the accident being a head-on collision, the Tribunal ought to have attributed contributory negligence to the deceased. In support of the latter submission, reliance has been placed upon the judgment of the Hon’ble Supreme Court **in Parmila & Ors. v. Rajender & Ors., 2026 INSC 420**.

4. The aforesaid contentions have been contested by Mr Amaresh Kumar, learned counsel appearing on behalf of the respondent claimants. He further submits that the compensation determined by the learned Tribunal does not represent just compensation and requires enhancement in terms of the principles laid down in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121, National Insurance Company Limited v. Pranay Sethi and others, (2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram & Ors., (2018) 18 SCC 130**.

5. Mr Amaresh Kumar submitted that the deceased's income was assessed at an unduly low figure. It has lastly been submitted that, even in the absence of a cross-appeal, this Court, in exercise of its appellate jurisdiction, can enhance the compensation in view of the principles laid down by the Hon'ble Supreme Court. On that basis, the claimants have sought dismissal of the appeal with suitable enhancement of compensation.

6. In his rejoinder submissions, Mr Anand submitted that there is no documentary evidence establishing the income claimed by the claimants. He further submitted that the person stated to be the employer of the deceased is his own brother and that, in the absence of reliable documentary evidence, the Tribunal was justified in taking the notified minimum wage as the basis for determining the income.

7. Having already received the records, the appeal was finally heard with the consent of the learned cCounsel for the parties. On consideration of the rival submissions and the materials on record, the following points arise for determination:

I. *Whether the appellant is entitled to avoid liability on the plea that the deceased did not hold a valid driving licence at the time of the accident?*

II. *Whether the Tribunal erred in declining to attribute contributory negligence to the deceased in the accident involving a head-on collision?*

III. *Whether the compensation awarded by the learned Tribunal is just and reasonable and, if not, to what extent it requires enhancement?*

8. Insofar as the first point of determination is concerned, it is apposite to mention that the first contention of the appellant does not find support from the pleadings before the Tribunal below. The allegation that the deceased was driving trailer No. JH-05BK-4041 without a driving licence was not taken in the written statement filed by the appellant. Moreover, no issue was framed on that question either. On the contrary, the deceased's driving licence was produced and marked as Ext. 1 and relied upon by the Tribunal while determining his age.

9. It is true that the insurer is entitled to raise the statutory defences available to it in law. However, a defence based on disputed facts must form part of the pleadings and be placed before the Tribunal so that the opposite party has an opportunity to meet it and the Tribunal can return a finding upon it.

10. In **Chinnama George v. N. K. Raju (2000) 4 SCC 130,** the Hon’ble Supreme Court held that a new ground not raised before the Tribunal cannot be raised for the first time on appeal.

This principle is equally applicable here, as the appellant did not plead before the Tribunal that the deceased was driving without a licence. The plea, therefore, cannot be introduced for the first time at the appellate stage, particularly when its consideration would require an examination of facts that were never the subject of adjudication before the Tribunal.

11. Besides, since the appellant urges breach of the terms of the insurance policy to avoid liability, the burden was on the appellant to plead and prove such breach, if any. In the absence of pleadings and proof, the appellant cannot escape liability. {See: **National Insurance Company Limited versus Swarn Singh [(2004) 3 SCC 297]** and **Narcinva V. Kamat and Another Versus Alfredo Antonio Doe Martins and Others [1985 ACJ 397 (SC)]**}.

12. Point No. (i) is, accordingly, answered against the appellant.

13. The question of contributory negligence must be considered in the light of the way the accident occurred, and the evidence brought on record.

14. The accident occurred on 31.05.2022 near Chhotourma Hattala. Trailer No. JH-05BK-4041, driven by the deceased, Mukesh Kumar Choudhary, collided with trailer No. NL-01AD-5697. The deceased was declared brought dead at Banshagar Hospital. Balrampur P.S. Case No. 84 of 2022 was thereafter registered based on the FIR, marked as Ext-2, and the charge-sheet, marked as Ext-3, was submitted against Rohit Kumar, the driver of trailer No. NL-01AD-5697, for offences punishable under Sections 279, 304-A and 427 of the Indian Penal Code.

15. The mere fact that the collision was head-on, however, cannot by itself determine the question of negligence. The learned counsel for the appellant placed reliance upon the decision of the Hon'ble Supreme Court in **Parmila (supra)** to contend that, having regard to the facts and circumstances of the present case, contributory negligence on the part of the deceased is made out.

16. The decision of the Hon'ble Supreme Court in **Parmila (supra)** requires the Court, in such a case, to examine the surrounding circumstances and the conduct of both drivers before fastening the entire blame on one of them. At the same time, the decision does not lay down that every head-on collision must necessarily result in an apportionment of negligence. What is required is a proper scrutiny of the evidence.

17. When the evidence in the present case is examined from that perspective, the material on record does not establish any negligence on the part of the deceased. The FIR and the subsequent charge-sheet attribute rash and negligent driving to the driver of trailer No. NL-01AD-5697 and not the deceased. Such material prima facie points towards the complicity of the driver of the offending vehicle in a claim proceeding, as recognised by the Hon'ble Supreme Court in **Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656** and **Ranjeet v. Abdul Kayam Neb, 2025 SCC OnLine SC 497.**

18. More importantly, the appellant has not brought any independent evidence to displace the material on record. O.P.W. - 1, examined on behalf of the insurer, was admittedly not an eyewitness to the occurrence. Additionally, no mechanical inspection report or other contemporaneous material has also been produced by the appellant to indicate that the deceased had driven his trailer in a manner which contributed to the collision. On the contrary, A.W.1 and A.W.2 have categorically spoken about the negligence of the driver of trailer No. NL-01AD-5697, and their evidence has remained unshaken in cross-examination. There is, therefore, no evidence on record from which any contributory negligence on the part of the deceased can be inferred.

19. The Tribunal had, in fact, framed a specific issue regarding contributory negligence and had rightly placed the burden upon the appellant. Having considered the evidence, it declined to attribute any negligence to the deceased.

20. Considering so, and even after critical evaluation of the evidence on record, in the absence of any material brought by the appellant to show that the deceased had contributed to the accident, this Court finds no reason to take a different view merely because there is reference to the accident arising out of a head-on collision. The scrutiny required by **Parmila (Supra)** has thus been undertaken on the present record, but it does not lead to a finding of contributory negligence.

21. Accordingly, point (ii) is answered against the appellant.

22. This brings us to the final issue on the justness of the compensation awarded. The learned Tribunal assessed the deceased's monthly income at Rs. 11,997/- based on the minimum wages applicable to a skilled worker in the State of

Jharkhand at the relevant time. The claimants, however, relied upon the oral evidence of A.W. 1 and A.W. 2, who stated that the deceased was being paid Rs. 1,000/- per day as remuneration and Rs. 500/- per day towards food.

23. The learned Tribunal declined to accept the said evidence on the point of income in its entirety. In the case at hand, A.W. 2 is the brother of the deceased and the owner of trailer No. JH-05BK-4041. The claimants produced no wage register, attendance record, bank statement, or other documentary material evidencing payment before the Tribunal. The deceased also filed no income-tax return. In these circumstances, the claim of Rs. 1,500/- per day, corresponding to a monthly income of Rs. 45,000/-, cannot be accepted merely based on the oral assertion.

24. Accordingly, the learned Tribunal's approach in assessing income at the notified minimum wage cannot be said to be based on any extraneous consideration. However, the rejection of the higher claim does not necessarily justify adopting the minimum wage as income in every case. It is settled law that the evidence must be assessed in its entirety.

25. The evidence on record establishes that the deceased possessed a driving licence, was engaged to drive a truck-trailer, and earned from such work. The absence of a formal wage record, particularly in an arrangement between close family members, cannot by itself lead to the conclusion that the deceased was earning no more than the statutory minimum.

26. The Hon'ble Supreme Court has repeatedly recognised this distinction. In the case of **Chameli Devi v. Jivrail Mian, (2019) 4 SCC 415**, the Hon'ble Court accepted that, in the case of a workman such as a carpenter, formal documentary proof of income may not ordinarily be available and that oral evidence can legitimately form the basis of assessment. Likewise, in **Chandra @ Chanda @ Chandraram v. Mukesh Kumar Yadav, (2022) 1 SCC 198**, the minimum wage was treated as a useful yardstick in the absence of documentary evidence, but not as an inflexible measure of actual income.

27. Furthermore, in the case of **Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236**, the Hon'ble Supreme Court similarly permitted reasonable guesswork based upon the occupation of the deceased and the surrounding circumstances, while at the same time requiring the assessment to remain realistic. More recently, in **Oriental Insurance Co. Ltd. v. Kalu Ram, 2026 INSC 653**, the Hon'ble Supreme Court has reiterated that the Court need not mechanically adhere to the lowest figure merely because the exact income is not established.

28. Thus, while the claim of Rs. 45,000/- per month cannot be accepted, there is equally no sufficient reason to confine the income to Rs. 11,997/-. The oral evidence regarding the deceased's engagement as a driver, his driving licence, the nature of the vehicle and the circumstances in which he was employed, considered together, justifies an assessment somewhat above the notified minimum wage, while keeping a reasonable distance from the figure claimed by the witnesses.

29. On consideration of the entire material, this Court considers Rs. 16,000/- per month to be a fair and reasonable assessment of the income of the deceased. The figure neither accepts the uncorroborated claim in full nor mechanically adopts the statutory minimum as mandated by the Hon’ble Supreme Court in the above-mentioned dicta. It represents a reasonable assessment of the earning capacity of the deceased in the circumstances proved on record.

30. Once the monthly income is so determined, the remaining components of the computation follow from the settled principles. The age of the deceased, as reflected from Ext. 1, was about 41 years. The multiplier of 14, therefore, requires no interference. Since the deceased was self-employed and between 40 and 50 years of age, 25% must be added towards future prospects in terms of **Pranay Sethi (Supra)**.

31. The deduction towards personal expenses, however, requires correction. The deceased was married and is survived by his widow, four minor children and his mother, making six dependants. Under **Sarla Verma (Supra)**, as affirmed in **Pranay Sethi (Supra)**, where the deceased is married, and the number of dependants is four to six, one-fourth of the income is to be deducted towards personal expenses. The deduction of one-sixth made by the learned Tribunal was, therefore, not in accordance with the settled principle. It is accordingly corrected to one-fourth.

32. The loss of dependency is thus worked out as follows:

Rs. 16,000/- × 12 = Rs. 1,92,000/-

Add 25% towards future prospects = Rs. 2,40,000/-

Less 1/4th towards personal expenses = Rs. 1,80,000/-

Rs. 1,80,000/- × 14 = Rs. 25,20,000/-

33. The claimants are also entitled to compensation under the conventional heads. Consortium is payable to each eligible claimant in accordance with **Pranay Sethi (Supra)** and **Magma General Insurance Co. Ltd. (Supra)**. Since the claim petition was filed in 2022, the applicable amount after the permissible enhancement is Rs. 44,000/- to each of the six claimants, totalling Rs. 2,64,000/-. Funeral expenses and loss of estate are assessed at Rs. 16,500/- each.

34. The total compensation consequently comes to Rs. 28,17,000/-. The Tribunal had awarded interest at the rate of 7.5% per annum from 30.09.2022. There is no reason to interfere with that part of the award. The said rate of interest shall, therefore, continue to operate from the date of filing of the claim petition. The interim compensation, if already paid, and the statutory amount, if deposited before this Court, shall be adjusted against the total compensation so determined.

35. Before parting with the question of enhancement, it is necessary to deal with the objection raised by the learned counsel for the appellant that, in the absence of a cross-objection by the claimants, this Court cannot enhance the compensation in an appeal preferred by the insurer. Reliance has been placed on **Ranjana Prakash v. Divisional Manager, (2011) 14 SCC 639.**

36. The contention of the learned counsel merits consideration. In **Ranjana Prakash (supra),** the Hon'ble Supreme Court held that, in an appeal preferred by the insurer, the compensation could not be enhanced in the absence of a cross-appeal or cross-objection by the claimant. The said decision, therefore, does lend support to the proposition advanced on behalf of the appellant-insurer.

37. Nevertheless, the Hon'ble Supreme Court considered the matter differently in a later decision. In **Surekha v. Santosh, (2021) 16 SCC 467**, the High Court of Bombay had declined enhancement for want of a cross-objection, expressly relying upon **Ranjana Prakash (supra)**. The Hon'ble Supreme Court did not accept that approach. It held that the Motor Vehicles Act casts a duty to determine just compensation; that an appeal against the Tribunal's award is a continuation of those proceedings; and that the appellate court may award just compensation even in the absence of a formal appeal or cross-objection.

38. Following **Surekha (supra)**, this Court is not precluded from examining whether the compensation awarded is just and, if it is not, from enhancing it to the extent indicated above.

39. Moreover, 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.

40. In view of the aforesaid position, the objection raised by the appellant cannot be accepted. Once this Court finds, on examination of the record, that the compensation awarded by the Tribunal does not represent just compensation, the Court is not precluded from correcting the award merely because the claimants have not preferred a separate appeal or cross-objection.

41. The remaining findings of the learned Tribunal, including the fastening of liability upon the appellant-Insurance Company in respect of trailer No. NL-01AD-5697, have not been shown to suffer from any infirmity warranting interference. Those findings are, accordingly, left undisturbed.

42. Point No. (iii) is consequently answered by holding that the compensation awarded by the learned Tribunal is not just and reasonable and requires enhancement from Rs. 22,16,475/- to Rs. 28,17,000/-.

43. For the reasons recorded above, the appeal is dismissed. The compensation payable to the claimants is enhanced to Rs. 28,17,000/-, with interest at the rate of 7.5% per annum from 30.09.2022 till actual payment.

44. The apportionment and the directions issued by the Tribunal regarding deposit of the shares of the minor children shall apply to the enhanced amount *mutatis-mutandis*.

45. The shares of Nisha Devi (wife of the deceased) and Pratima Devi (mother of the deceased) shall remain in the same proportion as directed by the Tribunal below.

46. The appellant-Insurance Company shall deposit the amount payable in terms of this judgment before the learned Tribunal within a period of eight weeks from today, after due intimation to the learned counsel for the claimants, after adjusting the amount, if any, already deposited. Upon such deposit, the learned Tribunal shall permit withdrawal in accordance with the award as modified by this judgment.

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

48. I.A. No. 8884 of 2026 has been filed by the claimants seeking withdrawal of the compensation deposited pursuant to the award. In view of the disposal of the appeal and the directions contained herein, the said application also stands disposed of. There shall be no order as to costs.

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

September 03, 2026

A.F.R.

APK/VK

Uploaded on 03.09.2026