

**In the Court of The Principal District Judge-cum-Presiding
Officer, Motor Accident Claims Tribunal, Lohardaga**

Present : **Rajendra Bahadur Pal,**
Principal District Judge-cum-
P.O. M.A.C.T., Lohardaga.

Dated – 03.02.2023

Place- Lohardaga

M.A.C.C. No. 27/2019

CNR-JHLH01-000345-2019

1. **Ayasha Khatun**, aged about 40 years (at present)
W/o Late Usman Ansari,
2. **Arman Ansari**, aged about 19 years (at present)
S/o Late Usman Ansari,
3. **Alaudin Ansari**, aged about 84 years (at present)
S/o Late Ramjan Ansari,
Applicant No. 2 is minor, therefore, represented through their
legal guardian mother Applicant No. 1
All resident of village Senha Muslim Mohalla, P.O-Senha,
P.S-Senha, District-Lohardaga (Jharkhand)

.....Claimants

Counsel for Claimants : Sri J.P.N. Sinha, Learned Advocate.

Versus

1. **Budhan Yadav**, S/o Ram Lakhan Yadav,
R/o Court Road Station Mohalla Lohardaga, P.O.-Lohardaga,
P.S.-Lohardaga, District-Lohardaga,
At present New Road near Hanuman Mandir,
P.O.-Lohardaga, P.S.-Lohardaga, District-Lohardaga
(Jharkhand)
(Owner of Truck bearing Registration No.
OR09E-5215)
2. The Branch Manager,
The Oriental Insurance Company Ltd.
Hotel Novelty Complex
Powerganj Chowk Lohardaga (Jharkhand) 835302
(Insurer of Truck bearing Registration No. OR09E-5215,
Insurance Policy No. 332903/31/2019/858 valid upto
08.06.2018 to midnight of 07.06.2019)

.... Opposite Parties

Counsel for O.P. No. 1 : Sri Manoj Prasad, Learned Advocate
Counsel for O.P. No. 2 : Sri Pankaj Kumar Agrawal,
Learned Advocate

Claim for compensation u/s 166 of the Motor Vehicles Act, 1988

Order/Award

1. Above named claimants have filed the claim u/s 166 of the Motor Vehicles Act, 1988 being family members i.e. wife, son and father of the deceased Usman Ansari.

1.1 The case was filed on 27.03.2019. The petitioners have also applied for the legal aid in the form of court fee to D.L.S.A., Lohardaga. The court fee was received on 02.07.2019 and the case was admitted for hearing on 19.08.2019.

2. The case of the claimants is that Usman Ansari was the truck owner-cum-driver bearing Registration No. JH08F-8946 .

➤ On 13.10.2018 at evening hour Usman Ansari was coming after loading bauxite from Amti Pani and was going towards Lohardaga alongwith another truck No. JH08C-6283. One Arshad Ansari was the driver of truck No. JH08C-6283. When both truck reached near Dewaki Petrol Pump, the drivers of the both trucks found that truck No. JH08B-5426 had breakdown and was stranding there. Both the drivers of truck No. JH08F-8946 and JH08C-6283 stopped their trucks and got down to know about the breakdown truck. In the meantime a truck No. OR09E-5215 loaded with bauxite came and dashed from back side to the stranded truck No. JH08B-5426. Both the drivers, namely, Usman Ansari and

Arshad Ansari came under wheel of the stranded truck and died on the spot.

➤ On getting information, Ghaghra police registered a case vide P.S Case No. 124/2018 corresponding to G.R Case No. 845/2018 u/s 279, 304A of IPC. The police investigated the case and submitted charge sheet against driver of the offending vehicle, namely, Budhan Yadav. It is said that the driver of the offending vehicle was driving his vehicle very rashly and negligently.

➤ One Ojahat Ansari father of another deceased Arshad Ansari gave his fardbeyan on 14.10.2018 at 09:15 A.M and on that basis Ghaghra P.S Case No. 124/2018 was registered. Certified copy of FIR and charge sheet of Ghaghra (District-Gumla) P.S Case No. 124/2018 has been marked Ext.-1 and Ext.-2.

➤ Bauxite loading challan of truck No. JH08F-8946 has been marked Ext.-3.

3. As per the claim petition the age of the deceased at the time of alleged occurrence was 42 years and his monthly income was 70,000/- rupees.

4. The claimants have filed claim of Rs. 99,65,000/- with interest @ 12% from the date of filing till realization.

5. **Show cause on behalf of O.P No. 1:-**

● The O.P No.1 is the driver of the offending vehicle No. OR-09E-5215.

● Drivers, Owners and Insurers of all the three vehicles bearing

registration No. JH08B-5426, JH08F-8946, JH08C-6283 are the necessary parties.

- That, vehicle No. OR09E-5215 was insured with Oriental Insurance Company Limited and the policy was valid from 08.06.2018 till 07.06.2019.

6. Show cause of O.P No.2:-

- ◆ That, from the perusal of FIR as well as charge sheet of Ghaghra P.S Case No. 124/2018, the cause of the alleged accident appears vague.
- ◆ That, if the compensation is awarded to the claimants that should be apportioned in ratio in between the owners/insurers of all the vehicles involved.
- ◆ In the absence of valid and effective driving licence and permit of the offending vehicle as per the policy, the insurer is not liable to indemnify the claim.
- ◆ The monthly income claimed by the claimants cannot be relied upon without sufficient documentary evidence.

7. The quantum of compensation claimed:-

(a)	Annual income of deceased Rs. 70,000/- × 12	Rs. 8,40,000.00
(b)	25% enhancement of annual income as future prospect Rs. 8,40,000/- × 25%	Rs. 2,10,000.00
		Rs. 10,50,000.00
(b1)	1/3rd deduction for personal expenses	Rs. 3,50,000.00
		Rs. 7,00,000.00
(c)	Multiplier by 14 × 70,000/-	Rs. 98,0000.00
(d)	Loss of Consortium (10% increased every three years)	Rs. 44,000.00

(e)	Loss of estate (10% increased every three years)	Rs. 16,500.00
(f)	Funeral expenses (10% increased every three years)	Rs. 16,500.00
(g)	Loss of parental Consortium (each 40,000/-) × 2 (10% increased every three years)	Rs. 88,000.00
	Total	Rs. 99,65,000.00
(h)	Interest at the rate of 12% per annum from the date of filing application till realization.	
(i)	Cost of the cases.	

8. Three witnesses have been produced by the claimants including herself.

C.W-1	Jainul Ansari
C.W-2	Rustam Ansari
C.W-3	Ayasha Khatun

9. The details of the documents marked exhibit during the the evidence of C.W.-3 are as follows :

Ext.-1	Certified copy of FIR of Ghaghra P.S. 124/2018
Ext.-2	Certified copy of Charge-sheet of Ghaghra P.S. 124/2018
Ext.-3	Bauxite loading Challan of Truck No. JH08F-8946

Mark 'X'	Xerox copy of Registration Certificate of Truck No. OR09E-5215
Mark 'X/1'	Xerox copy of Insurance Policy of Truck No. OR09E-5215
Mark 'X/2'	Xerox copy of Tax Receipt
Mark 'X/3'	Xerox copy of Certificate of Fitness
Mark 'X/4'	Xerox copy of Postmortem report of deceased Ushman Ansari
Mark 'X/5'	Xerox copy of Family Membership Certificate

Mark 'X/6'	Xerox copy of Registration Certificate of Truck No. JH08F-8946
Mark 'X/7'	Xerox copy of driving licence of Ushman Ansari
Mark 'X/8'	Xerox copy of PAN Card of Ayasha Khatun
Mark 'X/9'	Xerox copy of driving licence of Budhan Yadav

10. Following issues have been framed :

(I) Whether the claim petition is maintainable in its present form?

(II) Whether this court has jurisdiction for trial of this claim case?

(III) Whether the claimants have any cause of action?

(IV) Whether the deceased Usman Ansari died due to an accident occurred on 13.10.2018 near Dewaki Petrol Pump Vill.- Dewaki, P.S-Ghaghra, District-Gumla by Truck bearing Registration No. OR09E-5215?

(V) Whether at the time of accident, said offending vehicle bearing Registration No. OR09E-5215 was duly insured under the office of O.P. No.-2 Oriental Insurance Company Limited?

(VI) Whether the Driver of offending vehicle was holding a valid driving licence at the time of said accident?

(VII) Whether the permit of the offending vehicle bearing Registration No. OR09E-5215 is valid at the time of said accident?

(VIII) Whether there was any violation of the terms & conditions of the policy?

(IX) Whether the claimants are entitled for the compensation amount as claimed. If yes, to what amount and who is liable to pay said compensation amount?

(X) Whether the claimants are entitled for any other relief or reliefs?

11. Heard the learned counsel of both parties.

12. The learned counsel for the claimants submitted that the deceased was owner of a truck and he had monthly income of Rs. 70,000/-. He submitted that Ext.-3 is the document which establishes that in the month of July, 2018 the truck had earned an income of Rs. 1,45,850/-. He submitted that after deducting 50% from the said income, the rest is the profit and income of the claimant. He submitted that the claimants are entitled to get their claim to be calculated with monthly income @ 70,000/- .

13. On the other hand, learned counsel for the insurance company advanced his argument and put up following points objecting the claim of the claimants:-

- Two daughters of the deceased has not been made party.
- The family membership certificate is manipulated.
- There is no document to prove the income.
- The breakdown vehicle and the offending vehicle are not connected directly.
- The details of the accident is concocted.
- There was no permit of the vehicle, hence, if the insurance company is directed to indemnify the claim it should be given the right to recovery.

14. Issue No. (IV) : Whether the deceased Usman Ansari died due to an accident occurred on 13.10.2018 near Dewaki Petrol

Pump Vill.- Dewaki, P.S-Ghaghra, District-Gumla by Truck bearing Registration No. OR09E-5215?

➤ The certified copy of the Ghaghra (District- Gumla) P.S Case No. 124/2018 has been produced. The said case was registered on 14.10.2018 at 09:15 hours i.e. on the next day to the occurrence. The basis of the lodging of the said case was the fardbeyan of Ojahat Ansari and it is mentioned therein that driver of truck No. JH08F-8946, namely, Usman Ansari died in the said accident. Charge sheet has also been submitted against the driver of the offending vehicle No. OR09E-5215.

➤ The post-mortem on the dead body of Usman Ansari was conducted on 14.10.2018 by a doctor of Gumla Sadar Hospital. The doctor has noted the age of the deceased 42 years and cause of death was haemorrhage and shock due to the injuries caused in road traffic accident.

➤ Out of three oral witnesses P.W-1 Jainul Ansari has claimed himself eye witness to the occurrence. On the day of occurrence, he also driving his truck No. JH08B-5426 which has got breakdown near Dewaki Petrol Pump. Around 09:15 P.M, he was on road side and was inspecting his truck. At the same time Arshad Ansari came with his truck and seeing him, Arshad stopped his truck and got down from his vehicle and asked him why he stopped his truck there. In the meantime, Usman Ansari also arrived there. The said Usman seeing both Jainul Ansari and Arshad Ansari standing near

the truck, parked his truck and came to meet them. The witness told him that there was some problem in his truck. Thereupon, both Arshad Ansari and Usman Ansari opened the bonnet of his truck and were inspecting the engine. At that point of time truck No. OR09E-5215 which was being driven very rashly and negligently dashed his truck No. JH08B-5426 from behind. On getting high impact Arshad Ansari and Usman Ansari fell down from the truck and came under its wheel and died on the spot.

➤ The witness has been cross-examined by both the Advocates representing Budhan Yadav and Insurance Company.

➤ In the cross-examination he says that Usman Ansari lived in the village next to his village and his truck got broke down near Dewaki.

➤ At para 15 of the cross-examination the witness has stated that both the deceased died when they came under left side of the front wheels of his truck. He had also sustained injuries on his leg.

➤ P.W-2 and P.W-3 are not the eye witnesses to the occurrence. They are hearsay.

➤ In view of the statement of P.W-1, Ext.-1, Ext.2 and the copy of the post-mortem report, it is proved that Usman Ansari being owner and driver of truck No. JH08F-8946 died in the accident took place on 13.10.2018 around 09:15 P.M.

15. Issue No. (VI) : Whether the Driver of offending vehicle was holding a valid driving licence at the time of said accident?

Issue No. (VII) : Whether the permit of the offending vehicle bearing Registration No. OR09E-5215 is valid at the time of said accident?

■ The offending vehicle No. OR09E-5215 was registered in the name of Budhan Yadav and after investigation charge sheet was submitted against him. A photo copy of his driving licence has been filed which has been marked 'X/9' for identification. His driving licence number is JH0B20060038037 and the driving licence was valid from 22.05.2006 to 11.02.2025. There is no document or any oral evidence on behalf of opposite parties to falsify the genuineness of the driving licence of Budhan Yadav. The date of accident falls within the period of validity of the driving licence.

■ The said Budhan Yadav did not file the permit of his truck No. OR09E-5215. He has appeared and filed his show cause, however, he has not mentioned about the permit of his vehicle. Hence, the Issue No. (VI) is decided in affirmative, however, the Issue No. (VII) is decided in negative. It is held that on the date of the occurrence there was no permit for the vehicle bearing registration No. OR09E-5215.

16. Issue No. (IX) : Whether the claimants are entitled for the compensation amount as claimed. If yes, to what amount and who is liable to pay said compensation amount?

➔ As per the Judgment delivered by Hon'ble Supreme Court Sarla Verma Vs DTC, (2009) 6 SCC 121, only three facts need to be

established by the claimants for assessing compensation in case of death :-

- ➔ (a) Age of the deceased.
- ➔ (b) Income of the deceased and
- ➔ (c) The number of dependents.
- ➔ The claimants at first mentioned the income of the deceased @ 20,000/- rupees per month. Later on, it was amended to Rs. 70,000/- by filing Ext.-3. There is no document of any kind to prove the income claimed. Ext.-3 is a document issued by M/S Burman Associate for the month of July 2018. A sum of Rs. 1,45,850/- is the income for the truck No. JH08F-8946 for the month of July 2018.
- ➔ No person has been adduced to explain Ext.-3.
- ➔ On the point of income the P.W-1 has stated that Usman Ansari had to load 14 to 15 truck bauxite to unload the same at Lohardaga and for each trip his income was around 2,500/- rupees. As per the statement of P.W-1 his monthly income was 35,000/- to 38,000/- rupees per month.
- ➔ P.W-2 has stated that the monthly income of Usman Ansari was 70,000/- rupees.
- ➔ P.W-3 being the wife of deceased has also stated that the monthly income of her husband was 70,000/- rupees.
- ➔ In the cross-examination P.W-3 has stated that she was told by her husband that his monthly income was 70,000/- rupees. At the same time she has state that she was never given 70,000/- rupees by

her husband. She has also stated that she was never given single paise on her hand by her husband. She does not know how much income tax was being paid by her husband.

➔ The claim of the claimants that the monthly income of 70,000/- rupees of the deceased based on Ext.-3 is highly exaggerated. The P.W-1 is also a driver who would load bauxite at Amti Pani and unload same at Lohardaga. He has stated that for each trip he would get 5,000/- to 6,000/- rupees. After deducting all the expenses the net saving would come to 2,500/- rupees. The statement of P.W-1 appears to be rational. Since there was no fixed trips a truck would get, therefore, for an average ten trip in a month and for each trip a net saving of 2,500/- rupees, the monthly income comes to 25,000/- rupees.

➔ As far as age of the deceased is concerned, his driving licence has been marked 'X/7' for identification. In the driving licence his date of birth is 15th August 1965. The date of occurrence is 13.10.2018. Hence, on the date of occurrence the age of Usman Ansari was 53 years 1 month and 28 days.

➔ The number of dependents:-

➔ Only three persons has been made party in the case. They are widow, son and father of the deceased. However, on the day of occurrence the deceased had two daughters. The P.W-3 has stated the name of her daughters as Nagma and Salma. However, they were not made party in the case. However, to calculate the number

of dependents it comes five persons including two daughters of the deceased.

➔ On the basis of the above discussions, the amount of compensation of the claimants are calculated in the following manner:-

1	Monthly Income	Rs. 25,000/-
2	Annual Income	Rs. 25,000/- × 12 = Rs. 3,00,000/-
3	Future prospect (10%) Pranay Sethi Judgment para no. 59.4	Rs. 30,000/-
4	Total income	Rs. 3,30,000/-
5	¼ th deduction towards personal and living expense since there are five dependents including two daughters	Rs. 82,500/-
6	Total income (4 – 5)	Rs. 3,30,000/- – Rs. 82,500/- = Rs. 2,47,500/-
7	Multiplier 11 (Age 53 years)	Rs. 2,47,500/- × 11 = Rs. 27,22,500/-
8	Conventional head (enhancement @ 10%)	Rs. 77,000/-
9	Total compensation (7+8)	Rs. 27,22,500/- + Rs. 77,000/- = Rs. 27,99,500/-
10	Total compensation amount	Rs. 27,99,500/- (Twenty Seven Lacs Ninety Nine Thousand and Five Hundred Only)

17. Issue No. (V) Whether at the time of accident, said offending vehicle bearing Registration No. OR09E-5215 was duly insured under the office of O.P. No.-2 Oriental Insurance Company Limited?

◆ The issue is admitted by the O.P No. 2 at paragraph 11 of its written statement in following words:-

◆ This opposite party humbly submits that Truck bearing Registration No. OR-09E-5215 belonged to Budhan Yadav was insured with this opposite party at the time of the alleged accident vide Policy No.-332903/31/2019/858 (valid from 8-6-2018 to 7-6-2019), strictly subject to the terms, conditions, restrictions and limitations laid down in the policy.

18. Issue No. (I) Whether the claim petition is maintainable in its present form?

Issue No. (II) Whether this court has jurisdiction for trial of this claim case?

Issue No. (III) Whether the claimants have any cause of action?

Issue No. (X) Whether the claimants are entitled for any other relief or reliefs?

● The claimants have valid cause of action and their case is maintainable. Issue No. (II) has not been pressed by the opposite parties. The claimants are entitled for the compensation of Rs. 27,99,500/- (Twenty Seven Lacs Ninety Nine Thousand and Five Hundred Only) with interest @ 7.5% from the date of admission of the case i.e. from 19.08.2019 till date of actual realization. The O.P No. 2 being the insurer of vehicle OR09E-5215 will indemnify the compensation. At the same time the O.P No. 2 is entitled to recover

the compensation from O.P No. 1, since the offending vehicle had no permit on the date of accident.

19. The O.P No.2 is directed to send the compensation amount in the account of the Tribunal as per the details given below:-

A/c No.	40443454180
A/c Holder Name	Principal District and Sessions Judge cum-P.O. M.A.C.T.
IFSC Code	SBIN0012620
E-mail	pdjlhcourt@gmail.com

20. Out of the total compensation received 15% will go in favour of Allauddin Ansari, 10% will go in favour of each children of the deceased. And the rest amount will go in favour of widow of the deceased.

The office is directed to communicate the copy of the Award to Opposite Party through e-mail for its early compliance of the order.

(Dictated and Corrected by me)

Sd/-
(Rajendra Bahadur Pal)
ID No. 0256
Principal District Judge-cum-
P.O. M.A.C.T., Lohardaga.
Dated-03.02.2023.

Sd/-
(Rajendra Bahadur Pal)
ID No. 0256
Principal District Judge-cum-
P.O. M.A.C.T., Lohardaga.
Dated-03.02.2023.

(Typed by Guni)