JHRG010000482023

Presented on : 16-01-2023
Registered on : 16-01-2023
Decided on : 03-08-2026
Duration : 3 years 6 months 18 days

In the Court of District Judge-I-Cum-
Motor Vehicles Accident Claims Tribunal, Ramgarh

<u>Present:</u>

Vishal Srivastava,
District Judge-I-cum-Motor Vehicles Accident Claims Tribunal, Ramgarh

<u>Motor Accident Claim Case No- 05 of 2023</u>

1. Anita Akka aged about 30 years, W/o Late Raju Oraon
2. Hemant Oraon aged about 6 years, S/o Raju Oraon
3. Sugani Devi aged about 50 years, W/o Birsa Oraon
4. Birsa Oraon aged about 55 years, S/o Late Jin Oraon

All village- Sahi Tand, PO- Koto, PS- Patratu, Dist- Ramgarh (Jharkhand)

..........Petitioners/Claimants

Versus

1. Akash Kumar S/o Daya Sindhhu Nayak
R/o Umedanda, P.O.- Umedanda, P.S.- Burmu, District- Ranchi (Jharkhand) Pin- 835214, Mob. No. 7677215504.
(Owner of Tempo No. JH01CE-1356)
2. Sudhir Munda S/o Bandhu Munda.
R/o Umedanda, P.S. Burmu, District- Ranchi Jharkhand 835214,
(Driver of Tempo No. JH01CE-1356).
3. Chola MS General Insurance Co. Ltd.
Through its Branch Manager,
At- Flat No. 301, 3rd Floor Tiwari, Circular Road, Ajit Enclave, Lalpur, Ranchi, Jharkhand- 834001
(Insurer of Tempo No. JH01CE-1356 vide Policy No.

3379/01545985/000/00 w.e.f- 28.10.2016 to 27.10.2017).

...........… Respondents/ Opposite Parties

Application U/s 166 of M.V Act, 1988
Age of person dead - 32 years
Occupation of the deceased – Mason (Skilled Labour)
Case was filed on 16.01.2023
Case was admitted on 08.02.2023

Ld. counsel for the Claimant- Sri Anil Kumar
Ld. counsel for the O.P. Nos. 1 & 2- Rishi Kumar Mahto
Ld. counsel for O.P. No. 3 (Insurance Company)- Sri Ravi Shankar Prasad

JUDGEMENT

1. This claim case has been filed by claimants under Section 166 of M.V Act, due to death of Raju Oraon in a road accident and claim compensation of Rs. 27,20,800/- from the owner and insurer of offending vehicle bearing registration No- JH01CE-1356.

2. The claim case of the claimant arises out of a road accident dated 30.01.2017 at about 6:45 PM the deceased Raju Oraon along with Savita Devi were returning from market by his motorcycle bearing Reg. No. JH02Y-4283 when they reached at Khaira Manjhi Duar, near Honda Showroom, main road, Babandhara, PS Patratu, Ramgarh, a Tempo bearing Reg. No. JH01CE-1356 came from opposite direction with very excessive uncontrollable speed and from extreme wrong side of the road and dashed the deceased motorcycle due to which both of them received fatal injuries. The deceased died soon after the accident and there is no negligence on the part of the deceased.

3. All the opposite parties appeared and OP No. 3 Insurance Company has submitted his written statement by saying that the driver of offending vehicle had not driving licence at the time of occurrence.

4. On the basis of plaint and written statements the following issues have been framed for adjudication of the matter:-

ISSUES

I. Whether this claim case is maintainable in present form or not?

II. Whether the deceased died due to rash and negligent driving by driver of Auto Piaggio bearing registration No. JH01CE-1356?

III. Whether vehicle was insured with the Cholamandalam MS General Insurance Company Limited and whether OP Insurance Companies are liable to make payment of compensation ?

IV. Whether owner of the vehicle has violated any terms and condition of the Insurance Policies including requirement of valid Driving License?

V. Whether claimants are entitled to get compensation, if so, what would be quantum of compensation?

VI. Whether claimants are entitled to get any other relief or reliefs?

FINDINGS

5. The claimants in support of their case have examined 02 witnesses namely CW-1 Anita Akka the wife of deceased and CW-2 Iktekhar Ali the eye witness.

6. Apart the above, the claimants have proved the following documents in their support.

Ext. C-1	CC of FIR

Ext- C-2	CC of Charge Sheet
Ext. C-3	Order of MACT. Hazaribagh dated 02.09.2022
Mark X for identification	Photo copy of postmortem report
Mark X/1 for identification	Vehicle Registration Certificate of Tempo No. JH01CE-1356
Mark X/2 for identification	Insurance of Tempo No. JH01CE-1356
Mark X/3 for identification	Certificate of fitness of Tempo No. JH01CE-1356
Mark X/4 for identification	Tax of Tempo No. JH01CE-1356
Marked X/5 for identification	Driving license of driver of Tempo No. JH01CE-1356

7. Apart the above, the O.P. have proved the following documents in their support.

Ext.- D-A/OP01	Investigation letter
Ext. D-B/OP02	Authorization letter
Marked Y for identification	Photo copy of driving license of Sudhir Munda
Marked Y/1 for identification	Online print of driving license of Sudhir Munda

8. The O.P. No. 3 has examined one witness namely Amit Kumar Pathak works as Eagle Investigation Agency.

9. I have carefully scrutinized the evidences came on the record and I find that claimant witness no. 1 who is wife of deceased corroborated her case that on 30.01.2017 at about 06:45 PM while her husband was coming with one Sabita Devi hit by offending tempo who dashed his bike from the wrong side. In the accident her husband died on the spot who was only earning member of her family. Her husband used to earn Rs. 13,000/- per month as raj mistry. During cross-examination she admitted that she has filed driving licence and insurance paper of the offending vehicle.

CW-2 Iktekhar Ali deposed that the deceased was working as paint-putti mistry and he used to pay Rs. 500/- per day. During cross-examination he admitted that he has no documentary proof of income of deceased.

10. The Insurance Company has examined his witness namely Amit Kumar Pathak who was working as investigator of Eagle Investigation Agency who deposed that the driver of offending Vehicle No-JH021CE-1356 did not have driving license to drive on road. As per witness, he investigated the driving licence of offending vehicle of driver Sudhir Munda. The witness has marked Y the photocopy of driving licence of Sudhir Munda. As per witness, he has no knowledge the issuing and expiry date of driving licence of Sudhir Munda. The witness did not visit DTO Office, hence unable to say that the driving licence of Sudhir Munda was forged.

I have carefully perused the document and find that death of Raju Oraon is not denied. The FIR and charge-sheet which is proved as Ext-C1 and C2 show that the driver of offending vehicle Sudhir Munda was driving the offending vehicle and hit bike of Ranju Oraon. The exhibit marked X shows postmortem report, hence the above circumstances prove that on the date of occurrence Sudhir Munda by driving the offending vehicle hit the bike of Raju Oraon and resultant he died on the spot. Marked X/1 is registration certificate of the vehicle which shows that OP No-1 Akash Kumar is owner of the offending vehicle. The marked X/2 shows that the offending Tempo No. JH-01CE-1356 was insured vide Policy No. 3379/01545985/000/00 w.e.f- 28.10.2016 to 27.10.2017. The date of occurrence was 30.01.2017, hence it proves that on the date of occurrence the offending vehicle was insured by ICICI LOMBARD. The claimants have proved the driving licence of Sudhir Munda as X/5 for identification and submitted that it is a valid licence. The Insurance Company failed to prove that on the date of occurrence the driver of offending vehicle did not have valid driving licence. Hence if claim allows against the Insurance Company then Insurance Company has right to file recovery against the owner of offending vehicle if he proves that the driver of offending did not have valid driving licence on the date of occurrence.

11. **So far Issue No. I** I have carefully scrutinized the evidences came on the record and I find that the occurrence happened on 30.01.2017 and this claim case was filed on 16.01.2023. The occurrence was happened in Ramgarh, hence this claim case is maintainable and there is valid cause of action to file the present case. Hence this issue is decided in favour of claimants.

12. **So far Issue No. II** I have carefully scrutinized the evidences came on the record and I find that Exts-C1 and C2 show that the driver of erring vehicle hit the deceased due to which the deceased died. Postmortem report (marked ‘X/1’ for identification) also proved that the deceased was died of road accident by the offending vehicle. Hence the above evidences are sufficient to show that for this claim purpose the deceased was died due to rash and negligent driving by the driver of erring vehicle. Hence this issue is decided in favour of claimants.

13. **So far Issue No. III is concerned,** the Ext-A shows that the vehicle had valid insurance of Insurance Company i.e. O.P. No-3. The Insurance Company failed to show negligence on the part of deceased hence Insurance Company is liable to make payment of compensation to claimants. Hence this issue is decided in favour of claimants.

14. **So far Issue No. IV** is concerned, I have carefully scrutinized the evidences came on record and find that the Insurance Company failed to show that the driver of offending vehicle was negligent on his part. Hence there is no evidence that the owner of the vehicle has violated any terms and conditions of the Insurance Policy. Hence this issue is decided in favour of claimants.

15. **So far Issue No. V & VI are concerned,** I have carefully scrutinized the evidence and I find that except compensation the claimants are not entitled for any other relief. The compensation is hereby calculated in the following manner:-

Calculation of compensation

16. In the case record, the claimants have submitted that the deceased was a **rajmistry** who comes under skilled labour and governed by Minimum Wages for Shop and Establishment in Jharkhand. The occurrence happened in 2017. Hence I can presume that the deceased as skilled/clerical used to earn **Rs. 9867.26** per month (in 2017) which means he used to earn **Rs. 1,18,407.12/-** per annum.

Now as per the Principles laid down by the **Hon'ble Supreme Court in case of 'National Insurance Co. Ltd. Versus Pranay Sethi & Others' [2017 (4) T.A.C. 673 (S.C.)]**, 40% of Income of the deceased (as at the time of death the aged of deceased was 32 year and self employed) is to be added as future prospect for calculation of income of the deceased which equals to (**40% of Rs. 1,18,407.12/-**) = Rs. **47,362.848/-.** After including future prospect income of the deceased equals to (**Rs. 1,18,407.12/- per annum** + **Rs. 47,362.848**/-) = **Rs. 1,65,770/- per annum.**

As per claim application the deceased was 32 years old having four dependents at the time of occurrence. Hence as per the Principles laid down by the **Hon'ble Supreme Court in Sarla Verma's case** 1/4th of his income is to be deducted for his personal and living expenses which equals to amount (1/4th of Rs.**1,65,770**/-) = Rs. **41,442.5.** Hence the income for calculation of compensation will be (**1,65,770-41,442.5**) **Rs. 1,24,327.50** approximately.

As per the Law laid down by the **Hon'ble Supreme Court in Sarla Verma's case** if the age of the deceased was about 32 years multiplier applicable is 16. After applying multiplier, loss of dependency for death of the deceased calculated amount **Rs. 1,24,327.50** multiply by 16 is equal to **Rs. 19,89,240/-.** Further claimants are entitled for Loss of Consortium amount Rs. 40,000/-, under the head of Funeral Expenses amount Rs. 15,000/-, under the head of Loss of Estate 15,000/-. Total compensation amount equals to **Rs. 19,89,240/- + Rs. 15,000/- + Rs.15,000/- + Rs. 40,000/ = Rs. 20,59,240/-** for which claimants are entitled. Hence this Claim Application of the claimants are hereby allowed against O.P. No. 3.

It is, therefore,

O R D E R E D

The O.P No. 3 the insurer of erring vehicle to make payment of compensation amount of **Rs. 20,59,240/-** to the claimants as follows :

Claimant No-1 Anita Akka W/o Late Raju Oraon	Shall receive **Rs. 16,59,240/-**
Claimant No-3 Sugani Devi W/o Birsa Oraon	Shall receive **Rs. 2 lakh**
Claimant No-4 Birsa Oraon S/o Late Jin Oraon	Shall receive **Rs. 2 lakh**

The Claimant No- 3 Sugani Devi and claimant No- 4 Birsa Oraon shall receive Rs. 2 lakh each as compensation amount and rest amount shall be received by Claimant No- 1 and the Claimant No- 1 is directed to do fix deposit of Rs. 3 lakh in the name of claimant No- 2 till attendant of his majority. The payment shall be made within 30 days from the date of award.

In the light of directions of the **Hon'ble Apex Court in Dharampal & Sons Vs. U. P State Road Transport Corporation, 2008 (4) JCR 79 SC** the claimants are entitled the interest of @ 7.5% per annum on the award amount from the date of filing of this petition i.e. 1**6.01.2023.**

Claim Application of the claimants are hereby **allowed** against O.P No. 3. A free copy of judgment shall be given to O.P. No. 3 to provide compensation to the claimants.

(Dictated and corrected by me)

Sd/- Sd/-

(Vishal Srivastava) District Judge -I-cum-Motor Vehicles Accident Claims Tribunal, Ramgarh / 03.08.2026 J.O Code: JH00487	(Vishal Srivastava) District Judge -I-cum-Motor Vehicles Accident Claims Tribunal, Ramgarh / 03.08.2026 J.O Code: JH00487