2026:CGHC:19224

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1090 of 2022

1 - Jalam Sahu S/o Ramprasad Sahu Aged About 34 Years R/o Village Koliyari, Tahsil And District Dhamtari Chhattisgarh (Driver)

2 - Vikas Sahu S/o Naresh Sahu Aged About 24 Years R/o Bajrang Chowk, Rudri, Tahsil And District Dhamtari Chhattisgarh (Owner)

--- **Appellants**

versus

1 - Smt. Tikeshwari Sahu W/o Late Ratiram Sahu Aged About 29 Years Respondent No. 2 To 4 Are Minor Through Their Natural Guardian Mother Smt. Tikeshwari Sahu Wife Of Late Ratiram Sahu Aged About 29 Years R/o Village Joratarai, Post Joratarai, Police Station And Tahsil Bhakhara, District Dhamtari Chhattisgarh

2 - Yugal Kishore S/o Late Ratiram Sahu Aged About 10 Years Respondent No. 2 To 4 Are Minor Through Their Natural Guardian Mother Smt. Tikeshwari Sahu Wife Of Late Ratiram Sahu Aged About

29 Years R/o Village Joratarai, Post Joratarai, Police Station And Tahsil Bhakhara, District Dhamtari Chhattisgarh

3 - Kumari Tulsi D/o Late Ratiram Sahu Aged About 8 Years Respondent No. 2 To 4 Are Minor Through Their Natural Guardian Mother Smt. Tikeshwari Sahu Wife Of Late Ratiram Sahu Aged About 29 Years R/o Village Joratarai, Post Joratarai, Police Station And Tahsil Bhakhara, District Dhamtari Chhattisgarh

4 - Kumar Uma D/o Late Ratiram Sahu Aged About 5 Years Respondent No. 2 To 4 Are Minor Through Their Natural Guardian Mother Smt. Tikeshwari Sahu Wife Of Late Ratiram Sahu Aged About 29 Years R/o Village Joratarai, Post Joratarai, Police Station And Tahsil Bhakhara, District Dhamtari Chhattisgarh

5 - Shivcharan Sahu S/o Late Suklal Sahu Aged About 70 Years R/o Village Joratarai, Post Joratarai, Police Station And Tahsil Bhakhara, District Dhamtari Chhattisgarh R/o Village Joratarai, Post Joratarai, Police Station And Tahsil Bhakhara, District Dhamtari Chhattisgarh

6 - Branch Manager I C I C I Lombard General Insurance Company Limited, Branch Office Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Chhota Ashok Nagar, Raipur, District Raipur Chhattisgarh

--- **Respondent(s)**

For Appellants	:	Mr. Praveen Dhurandhar, Advocate
For Respondent No. 1-5	:	Mr. Anil Gulati, Advocate
For Respondent No.6	:	Mr. Palash Agrawal, Advocate

MAC No. 1041 of 2022

1 - Smt. Tikeshwari Sahu Wd/o Late Ratiram Sahu Aged About 29 Years R/o Village Joratari, Post Joratarai, Police Station And Tahsil Bhakhara,, District : Dhamtari, Chhattisgarh

2 - Yugal Kishore S/o Late Ratiram Sahu, Aged About 10 Years Minor, Through Natural Guardian Mother Smt. Tikeshwari Sahu Wd/o Late Ratiram Sahu, R/o Village Joratari, Post Joratarai, Police Station And Tahsil Bhakhara,, District : Dhamtari, Chhattisgarh

3 - Kumari Tulsi D/o Late Ratiram Sahu, Aged About 8 Years Minor, Through Natural Guardian Mother Smt. Tikeshwari Sahu Wd/o Late Ratiram Sahu, R/o Village Joratari, Post Joratarai, Police Station And Tahsil Bhakhara,, District : Dhamtari, Chhattisgarh

4 - Kumari Uma D/o Ratiram Sahu Aged About 5 Years Minor, Through Natural Guardian Mother Smt. Tikeshwari Sahu Wd/o Late Ratiram Sahu, R/o Village Joratari, Post Joratarai, Police Station And Tahsil Bhakhara,, District : Dhamtari, Chhattisgarh

5 - Shivcharan Sahu S/o Late Suklal Sahu Aged About 70 Years R/o Village Joratari, Post Joratarai, Police Station And Tahsil Bhakhara,, District : Dhamtari, Chhattisgarh

---**Appellants**

Versus

1 - Jalam Sahu S/o Ramprasad Sahu Aged About 34 Years R/o Village Koliyari, Tahsil And, District : Dhamtari, Chhattisgarh

2 - Vikash Sahu S/o Naresh Sahu Aged About 24 Years R/o Bajrang Chowk, Rudri, Tahsil And, District : Dhamtari, Chhattisgarh

3 - Branch Manager, I.C.C.I. Lombard General Insurance Company Limited, Branch Office, Ground Floor, Vanijya Bhawan Devendra Nagar, Road, Chhota Ashok Nagar, Raipur,, District : Raipur, Chhattisgarh

--- **Respondent(s)**

For Appellants	**:** Mr. Anil Gulati, Advocate
For Respondent No. 1 & 2	**:** Mr. Praveen Dhurandhar, Advocate
For Respondent No. 3	**:** Mr. Palash Agrawal, Advocate

Hon'ble Shri Justice Sachin Singh Rajput

Order on Board

25/04/2026

1. Since both the appeals are arising out of the award dated 28.06.2022 passed in Claim Case No. 87/2020 by the Additional Motor Accident Claims Tribunal, Dhamtari, District- Dhamtari, C.G., they are being heard and decided by this common order. MAC No. 1090 of 2022 is filed by the driver and owner of offending vehicle and MAC No. 1041 of 2022 is filed by the claimants. The parties are referred to their status before the claims tribunal.

2. A claim application under Section 166 of the Motor Vehicles Act, 1988 (for short “MV Act”) has been filed by the claimants seeking compensation of Rs. 30 lakhs on account of death of deceased Ratiram in an accident that occurred on 31.10.2020 by rash and negligent driving of the offending tractor bearing registration no. CG-05-AK-2248 driven by respondent no. 1, owned by respondent no. 2 and insured with respondent no. 3/insurance company.
3. As per pleadings of the claim application, the deceased was travelling in the offending vehicle as labour. The driver of the offending vehicle drove it rashly and negligently an suddenly applied break as a result the deceased who was seated in the vehicle fell down and came beneath the vehicles and died on the spot.
4. The accident was reported to the police station, the crime was registered against the driver of the offending vehicle and after completion of the investigation, charge sheet was filed in the competent court. The deceased was aged about 30 years and was working as a labour in cement factory earning Rs. 500/- per day. Thus, the above stated compensation was claimed.
5. The claim application was resisted by driver, owner and insurance company and denied the averments of the claim application. The insurance company took a plea that the driver of the offending vehicle was not holding a valid and effective driving license. The offending vehicle was insured for agricultural purposes and was

being used for other purposes than agricultural purpose. The deceased was a gratuitous passenger thus, the insurance company is not liable to pay.

6. The learned claims tribunal on the basis of above stated pleadings framed the issues and decided the same in favour of the claimants, however, while deciding the issue no. 3 with regard to violation of terms and conditions of the insurance policy, held it to be proved and insurance was exonerated from payment of compensation.

7. Learned counsel for the owner vehemently argued that on the date of incident, the vehicle was used for agriculture purpose only. He submits that in the trolley attached with the offending vehicle, sand was being transported for construction of boundary wall in the field. The tribunal erred in holding that the vehicle was being used for other than agricultural purpose. Thus, the finding on issue no. 3 deserves to be set aside and insurance company may be held liable to pay the compensation.

8. Learned counsel for the claimants submits that the deceased was aged about 30 years and claims tribunal assessed the monthly income of the deceased to be Rs. 6,000/- which is on the lower side looking to the date of accident, i.e., 31.10.2020. Apart from this he submits, in the event the insurance company is exonerated from payment of compensation, the doctrine of pay and recover may be applied and insurance company may be directed to pay the compensation first and may recover it from

the driver and owner of the offending vehicle. He placed reliance upon the judgments of the Hon'ble Supreme Court in case of **Sunita Vs. United India Insurance Company Limited AIR Online 2025 SC 601.**

9. Shri Palash Agrawal appearing for Insurance Company supports the impugned award. He submits that apart from the vehicle being used for non-agricultural purposes, the deceased was a gratuitous passenger and specific plea was taken in the written statement and witness to that effect was also examined who has categorically deposed that the deceased was the gratuitous passenger in the offending vehicle. He further submits that claimants have also pleaded this fact in their claim application and thus it becomes an admitted fact, and as there is no sitting capacity in the tractor, the deceased being a gratuitous passenger, his risk was not covered under the policy. Thus, the exoneration of the insurance company is well benetted and does not require any interference by this Court. With respect to non-application of doctrine of pay and recover Mr. Palash Agrawal placed reliance upon judgment of Supreme Court in case of **Balu Krishna Chavan Vs. The Reliance General Insurance Company Limited & Ors.** 2022 Live law (SC) 5932.

10. Heard learned counsel for the parties and perused the record.

11. The first point for determination before this Court is to whether the finding of the learned Claims tribunal in issue no. 3 exonerating the insurance company from payment of compensation is correct

finding or not.

12. The claim application was filed by the claimant inter-alia pleading that deceased was a labour and was going seated in the offending tractor. This evidence has been led by the claimants to prove its pleading. The insurance company in their written statement has taken a specific ground that the deceased was a gratuitous passenger. To substantiate this ground, it has examined one witness namely Akash Soni (NAW-1) who in his deposition before the learned claims tribunal categorically stated that according to policy the sitting capacity of tractor is only one which is also reflected in the RC book. He further deposed that deceased was traveling as unauthorised passenger (gratuitous passenger) in the offending vehicle and according to the terms and conditions of the insurance policy, the insurance company is not liable to pay the compensation. He has further deposed that the offending vehicle was being used for commercial purpose and according to the insurance policy it could have been used for agricultural purpose. In cross-examination he has stated that during the course of investigation he did not find any evidence to suggest that the offending vehicle was being used for commercial purpose.

13. The learned counsel for the owner tried to persuade this Court that the offending vehicle was not used for commercial purpose and the sand which was being carried was for the purposes of construction of boundary wall in the filed. In the opinion of this

Court, this issue does not germane in the appeal that even if it is found that offending vehicle was only used for agricultural purpose, it would not make any difference in deciding the issue no. 3 for exoneration of the insurance policy. From the evidence on record, it is quite evident that the deceased was seated in the tractor, was traveling and died on account of rash and negligent driving of the tractor falling from the tractor. From the evidence of insurance company as well as pleadings of the parties, it is quite vivid that the deceased was a gratuitous passenger. The insurance company is not required to cover the risk of gratuitous passenger in the goods vehicle has been settled by the Hon'ble Supreme Court in catena of judgments.

14. Thus, the finding on issue no. 3 with regard to exoneration of insurance company is based upon proper appreciation of evidence and does not require interference and is hereby affirmed.

15. The next point for determination before this Court is whether the just compensation has been awarded or not.

16. As per pleadings of the claim application, the deceased was aged about 30 years and was earning Rs. 500/- per day. The date of accident was 31.10.2020. The Tribunal found the monthly income of the deceased to be Rs. 6000/-. There are 5 dependents upon the income of the deceased including young widow, three minor children and aged father. Thus, taking into consideration the evidence available on record; number of dependents; nature of

job; minimum wages at the time of accident; this Court can safely hold the monthly income of the deceased to be Rs. 11,000/-.

17. It is settled principle of law that just compensation has to be awarded. Compensation need not be a meagre amount of compensation nor a bonanza. Thus, in light of the above and taking guidance from the judgment of Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. V. Pranay Sethi and others; (2017) 16 SCC 680, Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors; (2009) 6 SCC 121** and **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors; (2018) 18 SCC 130,** this Court is recomputing the compensation as below:-

S. No.	**Particulars**	**Awarded by this Court**
1.	Monthly income	Rs. 11,000/-
2.	Future prospects @ 40%	Rs. 4,400/-
3.	Enhanced income	Rs. 11,000 + Rs. 4,400 = Rs. 15,400/-
4.	Annual income	Rs. 1,84,800/-
5.	Personal expenditure (¼)	Rs. 1,84,800 / 4 = Rs. 46,200/-
6.	Net income	Rs. 1,84,800 – 46,200/- = Rs. 1,38,600/-
7.	Multiplier of 17 applied to assess total loss of dependency	Rs. 1,38,600 x 17 = Rs. 23,56,200/-
8.	Funeral expenses	Rs. 16,500/-
9.	Loss of estate	Rs. 16,500/-
10.	Spousal consortium	Rs. 44,000/-
11.	Parental consortium to	Rs. 40,000 x 3 = Rs.

	appellants	1,20,000/-
12.	Filial consortium	Rs. 40,000/-
13.	Total compensation	Rs. 25,93,200/-

18. The amount of compensation of Rs. 13,62,200/- awarded by the Tribunal is enhanced to Rs. 25,93,200/-. Hence, after deducting the amount of Rs. 13,62,200/-, the claimants are held entitled for an additional amount of Rs. 12,31,000/-. The additional amount shall carry interest @6% per anuum from the date of claim application, i.e., 07.12.2020. The impugned award stands modified to the above extent.

19. Now, the last point for determination before this Court is in the given facts and circumstances of the case, whether doctrine of pay and recover can be exercised by this Court.

20. In case of Sunita (supra) relied upon by Mr. Anil Gulati, there was a case of exoneration of the insurance company. In that the case *the insured vehicle was having "Liability Only Policy" and no premium was paid to cover the driver, owner, or a gratuitous passenger travelling therein*. The Supreme Court observed that *in our view, the Courts below erred in holding that the Insurance Company is not liable to pay the compensation to the claimant-appellants, for the principle of "Pay and Recover" ought to have been invoked. As such, we are inclined to interfere with the above findings of the Courts below*. Further in paragraph 14, the Supreme Court advert to the exposition of Supreme Court *in*

National Insurance Company Vs. Baljit Kaur. The deceased therein was travelling as a gratuitous passenger, and due to the rash and negligent driving of the offending vehicle, lost his life. The Insurance Company was directed to satisfy the amount awarded by the Courts below and recover the same from the owner of the vehicle, as the premium was not paid by the owner of the vehicle towards gratuitous passenger. Further, this proposition was followed in Anu Bhanvara Vs. IFFCO Tokio General Insurance Co. Ltd. Thus, applying the expositions of law, Supreme Court stated that the Courts below ought to have directed the Insurance Company to indemnify the amount and thereafter recover the same. Apart from this, this Court is conscious of the fact that this Court while admitting the appeal has stayed the effect and operation of the award on 18.10.2022 in the appeal filed by the owner. As submitted by Mr. Anil Gulati, no amount of compensation has been received by them. There are 3 minor children, young widow and aged father who are deprived of the fruits of the decree. There are catena of decisions of Supreme Court in case where doctrine of pay and recover is applied.

21. Hon'ble Supreme Court in the case of **Saju P. Paul (supra)** was dealing with the appeal filed by the Insurance Company against the award passed by the High Court in which in a review petition, the appellant/Insurance Company was liable to pay compensation and the question which was posed before the

Supreme Court is “whether having regard to the provisions of the MV Act, the Insurance Company is liable to pay compensation for the bodily injury caused to the claimant who was travelling in a goods vehicle as a spare driver though he was employed as a driver in another vehicle owned by the owner of the vehicle under the policy of the Insurance.”

22. Hon’ble Supreme Court in the case of **Manuara Khatun & Others Vs. Rajesh Kumar Singh and Others** reported in 2017 ACJ 1031 has held that in a case where the deceased was as a gratuitous passenger in a jeep, applied the principle of pay and recover and directed that the same may be recovered from the owner. In the case of **Anu Bhanvara and Others Vs. Iffco-tokio General Insurance Co. Ltd. & Others** reported in 2019 ACJ 2802 it has been held that when two gratuitous passengers were travelling in a jeep which was a goods vehicle it does not be covered under the Insurance policy as they were not travelling as the owner of the goods, passed an order of pay and recover and directed the insurance company to pay the same and thereafter recover the same from the driver and owner of the vehicle. In the case of **Shivraj Vs. Rajendra and Another** reported in (2018) 10 SCC 432, the person was travelling in a tractor as a passenger, it has been held in para 11 as under:

> “11. At the same time, however, in the facts of the present case the High Court ought to have directed the insurance company to pay the compensation amount to the appellant claimant with liberty to recover the same from the tractor

owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. Vs. Swaran Singh (2004) 3 SCC 297:2004 SCC (Cri.) 733, Mangla Ram Vs. Oriental Insurance Co. Ltd, (2018) 5 SCC 656:(2018) SCC (Civ) 335: (2018) 2 SCC (Cri) 819; Rani Vs. National Insurance Co. Ltd. (2018) 8SCC 492: (2018) 3 SCC (Cri) 599 and including Manuara Khatun Vs. Rajesh Kumar Singh (2017) 4 SCC 796:(2017) 2 SCC (Civ) 710:(2017) 2 SCC (Cri) 492. In other words, the High Court should have partly allowed the appeal preferred by Respondent 2. The appellant may, therefore, succeed in getting relief of direction to Respondent 2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner, Respondent 1."

23. Apart from the above authoritative pronouncement, I am also guided by the various authorities of the Hon'ble Supreme Court in the case of Oriental Insurance Company Ltd. Vs. Brij Mohan (2007) 7 SCC 56. The apex Court has observed that:

"a gratuitous passenger carried in a goods vehicle is not covered under the Act but the Act has extended the statutory cover to the owner of the goods or his authorized representative carried in the vehicle, and not to gratuitous passengers. A direction however was given by the Apex Court to 'pay and recover' though it held that, gratuitous passenger was not covered under the policy. Even though the Insurance Company was found to be not liable, by exercising constitutional jurisdiction under Article 142 of the Constitution of India direction was given to satisfy the award made by the Tribunal in favour of the appellant. Therefore, this decision indicates that the extraordinary jurisdiction under Article 142 of the Constitution of India which is available only to the apex Court can be exercised to direct pay and recovery,

> *even when it finds that the liability of the Insurance Company is absent. In spite of that, a direction can be issued by the apex Court to the Insurance Company to satisfy the award and later recover the said amount from the owner.*

24. Similar view was taken in another decision in case of **New India Insurance Company Vs. Darshana Devi and Others** reported in (2008) 7 SCC 416 wherein the apex Court again exercising its jurisdiction under Article 142 of the Constitution, directed the Insurance Company having found not liable under Section 149 (2) of the Act to satisfy the award, to pay the claimants and to recover from the insured the amount paid. In the said case, the driver of the said vehicle did not have a driving license, the deceased fell down and came underneath a tractor which was driven by the said driver. The Court held that the owner was liable to pay the compensation and as the owner was a party to the contract of the insurance, the insurer was directed to pay the award and recover the amount from the insured owner, in order to do complete justice in the matter.

25. Thus, taking into consideration above facts and circumstances of the case, this Court is of the opinion that doctrine of pay and recover should be applied in the case in hand.

26. As it is directed that the amount of compensation as awarded by the Claims Tribunal and enhanced by this Court be paid by the Insurance Company within a period of 60 days from today along with interest as awarded by Claims Tribunal. Upon such deposit being made, 20% each shall be invested in the name of

appellants No. 2, 3 and 4 in the form of a Fixed Deposit Receipt (FDR) in any Nationalized Bank till they attain majority. Further, 25% shall be invested in the name of appellant No. 1 in the form of a Fixed Deposit Receipt (FDR) in any Nationalized Bank for a period of 2 years. The balance of 25% of amount, the tribunal shall pass appropriate order with regard to its disbursement and apportionment amongst with appellant no. 1 and 5.

27. In view of above, the appeal filed by the claimants bearing MAC No. 1041 of 2022 is **allowed in part** and the appeal filed by the owner and driver bearing MAC No. 1090 of 2022 is **dismissed**.

Sd/-
(Sachin Singh Rajput)
JUDGE

Madhurima