

IN THE HIGH COURT OF JHARKHAND, RANCHI

Misc. Appeal No.69 of 2024

Future Generally (Generali) India Insurance Company Limited, 2nd Floor
 Gyatari Enclave, 6th Avenue Road, Bistupur, Jamshedpur P.O. and P.S.
 Bistupur, District East Singhbhum through its Deputy Manager, Priyanka
 Mondel aged about 32 years daughter of late Shri Tapas Mondel having its
 office at 8th Floor, Block-C, Appejay House, 15 Park Street, P.O. and P.S.
 Park Street, Kolkata-700016 **Appellant(s)**

-- Versus --

- 1.Premiya Devi wife of late Lakhan Saw
- 2.Ramdew Kumar Saw son of late Lakhan Saw
- 3.Durga Shankar Saw son of late Lakhan Saw
- 4.Savita Devi daughter of late Lakhan Saw
- 5.Gudiya Devi Elder daughter of late Lakhan Saw
- 6.Gudiya Devi Younger Daughter of late Lakhan Saw
- 7.Mohani Devi daughter of late Lakhan Saw

All resident of Village Chhatarbar, P.O. Karma P.S. and District
 Koderma *(Claimant No.1 to 7)*

- 8.M/s Cathy Enterprises through I/c Naval K. Agiwal son of Bala Prasad
 Agiwal, 1 GK Apartment Contractors Area Bistupur, P.O. and P.S. Bistupur,
 Jamshedpur District East Singhbhum, Pin 831001 (O.P.No.2) (Owner)
- 9.Lakshman Yadav son of Bhatu Yadav resident of Village Pipradih, P.O.
 and P.S. Chandwara, District Koderma (O.P.No.3) (Operator/Driver)

..... **Respondent(s)**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant/Insurance Co. :- Mr. Alok Lal, Advocate
 For the Resp.1 to 7 (Claimants) :- Mr. Manoj Kumar No.II, Advocate

10/10.07.2025 Heard Mr. Alok Lal, the learned counsel appearing on behalf of the
 appellant/ Insurance Company and Mr. Manoj Kumar No.II, the learned counsel
 appearing on behalf of the respondent Nos.1 to 7 (Claimants).

2. Nobody has appeared on behalf of the respondent nos. 8 and 9 inspite of
 service of notice.

3. This appeal has been preferred against the judgment dated 23.12.2022
 passed by learned Principal District Judge- cum-Presiding Officer, Motor Vehicle
 Accident Claim Tribunal Koderma in Motor Accident Claim Case No.07 of 2021.

4. Mr. Alok Lal, the learned counsel appearing on behalf of the appellant /Insurance Company submits that the claimants have filed the Claim Case before the learned Claims Tribunal alleging herein that on 15.11.2020 at about 10.15 a.m., the deceased Lakhan Saw along with his son in law was going to Koderma by motorcycle bearing Registration No.JH-12F-8437 and as they reached near village Charadih, Ranchi-Patna Road, the motorcycle slipped on the road due to stone chips lying on the road and both of them were fell down. In the meantime, a Cater Pillar Motor Grader/ Road Roller bearing Registration No.Jh-12F-2738 dashed them as a result of that both persons were injured. They were admitted at Sadar Hospital, Koderma for treatment from where they were referred to RIMS, Ranchi for better treatment but on the way Lakhan Saw died. It is further alleged that the deceased Lakhan Saw was a labour and doing cultivation work and earn Rs.23000/- per month. The deceased was the only bread-earner of his family and claimants were fully dependent upon the deceased's income. It is further alleged that due to sudden accidental death of the deceased, the applicants have sustained great loss. It is also alleged that the offending vehicle was insured with the O.P.No.1/ M/s Future Generally India Insurance Company Limited and the O.P.No.2 Nawal K. Agiwal was I/c of the offending vehicle through M/s Cathy Enterprises at the relevant time of occurrence.

5. Mr. Alok Lal, learned counsel for the appellant /Insurance company further submits that the learned Tribunal has been pleased to allow the claim to the tune of Rs.8,11,312/- with interest @ 6% per month from the date of institution of the case i.e. 24.03.2021 till the date of payment within one month from the date of receipt/production of a copy of the Award, failing which the award amount shall carry interest @9% per annum. He submits that the said road roller was not insured under the Motor Vehicle Act and in light of the requirement made under section 147 of the Motor Vehicle Act. By way of

producing the insurance policy Mr. Alok Lal, the learned counsel for the insurance company further elaborates his argument by way of referring clause 15 of the policy and submits that the third party in light of that clause, are not ensured on that policy and in view of that, learned court has wrongly decided this issue. On this ground, he submits that the award may kindly be reversed. He further submits that the interest is also on the higher side.

6. The learned counsel appearing on behalf of the claimants submits that the learned Tribunal has framed Issue no.6 and 7 with regard to the involvement of the said vehicle and failure of any term and condition of the policy and both the issues have been decided by the learned Tribunal and the learned Tribunal has found that the policy was there and the said accident was covered within the said policy and all the documents have been brought by the owner and the insurance company has not pointed out any specific violation of the terms and conditions of the policy. He submits that in view of that, the appellant herein has failed to prove the case before the learned Tribunal and even not filed the written statement. The contention of the appellant is not tenable. He submits that the learned Tribunal has given the cogent reason on finding and in view of that, this appeal may kindly be dismissed.

7. In view of that above submission of the learned counsel appearing on behalf of the parties the only point is required to be decided by this Court is, as to whether the said Cater Pillar/Road Roller was covered within the policy or not under the Motor Vehicles Act.

8. From the record and the judgment of the learned Tribunal it transpires that the insurance company has not filed any written statement before the learned Tribunal and debarring of the filing of written statement was not challenged by the insurance company before any court for setting aside and no evidence has been made on behalf of the insurance company before the learned Tribunal to the effect as has been argued by Mr. Alok Lal the learned

counsel for the appellant/ insurance company. Section 2(28) of the Motor Vehicles Act, defines the motor vehicle, which is as under:

2 (28)motor vehicle or vehicle means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimetres];

9. As to whether a particular vehicle can be defined as motor vehicle in terms of section 2(28) of the said Act, is to be determined on the facts of each taking into consideration the use of the vehicle and its suitability for being used on roads. Once it is found to be suitable for being used on the road, it is immaterial whether it runs on the public road or private road for the reason that actual either for a particular purpose is no criterion to decide the same. The definition of motor vehicle takes within its ambit, a dumper and tractor and road roller. The road roller which is used basically for advancement of the roads and can be used for factory premises which can suitably be adopted for being used on the roads. Therefore, they will meet the requirement of the definition of Motor Vehicles under section 2(28) of the Act. In light of that the word used only in that section clearly suggest that the exemption is confined only to that kind of vehicle which are exclusively being used in factory or in a closed premises. Thus, those vehicles which are not adapted for use upon the road, are only to be excluded.

10. Admittedly, in the case in hand, accident took place due to dash by the said road roller and the said road roller was on the road. The policy produced by Mr. Alok Lal, the learned counsel appearing on behalf of the appellant/ insurance company has been perused by this Court wherefrom it transpires that the said policy was also meant for third party liability as well as terrorism cover

and for that, the premium has been paid. Thus, liability of third party is covered in light of the said policy and the same is being depicted hereinbelow:

“Contractors Plant and Machinery Insurance Policy Schedule
Policy Servicing Office: Off. Code 81 Future Generali India Insurance Company Limited Tee Kay Corporate Tower, 4th Floor, Near Voltas House, Bistupur Main Road Jamshedpur, Jharkhand Pin Code 831001
Policy No: E0071246 **Period of Insurance :** From 00.00.08/11/2020 to Midnight of 07/11/2021
Insured : Cathy Enterprises **Intermediary Name/ Code :** MOUSUMI ROY/60022541
Address : 1.G.K. Apartment Contractors Area, **Telephone(Mob.,off, Hom)** 8051135752;9334083844/0 Road No.1, Bistupur, Jamshedpur – **Email ID:** mroy626@in.com Jharkhand 831001
GSTIN Number : 20AAGFC1341L1ZX **FGI GSTIN Number :** 20AABCF0191R1ZN

In consideration of the Policy holder named herein paying to the Future Generali India Insurance Company Limited (herein after called the Insurer) the premium as stated in the Schedule and in reliance upon the statement made by the policy holder in the proposal including its attachments or otherwise, and the material incorporated therein, the Insurer agrees to provide insurance against loss damage liability or expenses to the extent and in the manner herein provided subject to all terms, conditions, exceptions and warranties herein after set forth.

Co Insurance Details		Schedule Of premium (Rs.)	
Insurer	Share(in %)	Gross Premium	Rs.20,145.24
Future Generali India Insurance Company Limited	100%	Goods and Services Tax	Rs.3,626.15
		Total Premium	Rs.23,771.00

Risk Details	
Location of Opewrations	Any wherein India
Business	Contractor
Financial Interest	N.A.

Specification Of Insured Items				
Item No.	Description of Item	Year of Manufacture	Sum Insured (Rs.)	
01	Caterpillar MAKE MODEL CATERPILLAR MOTOR GRADER REG.NO.JH05BJ3267 ENG.NO.TX701293 CHASSIS NO.309409607310615	2015	7,943,670	
Total			7,943,670	

Section II- Third Party Liability		
Sl.No.	Description	Limit of Liability
01.	Limit of indemnity in respect of any one accident or series of accidents arising out of one event (AOA)	7,94,367
02.	Limit of indemnity in respect of all accidents or series of accidents arising during the policy period (AOY)	7,94,367

Additional Coverage		
Sl.No.	Description	Sum Insured
01.	Floater Coverage Floater Co	7,943,670
02.	Owners Surrounding Property Damage	794,367

Terrorism Cover		
Sl.No.	Description	Sum Insured (Rs.)
01.	Terrorism	7,943,670

Excess		
01.	AOG Perils / Collapse	1% of S.I. Subject to minimum of Rs.50,000/-
02.	Normal Perils	1% of S.I. subject to minimum of Rs.50,000/-
03.	Boom Section	20% of claim amount subject to minimum of Rs.25,000/-“

11. From the above, it is crystal clear that third party liability was covered.

So far as clause 15 of the said insurance policy on which reliance has been placed by Mr. Alok Lal, the learned counsel appearing on behalf of the appellant/ insurance company, that is as under:

“15. It is understood and agreed that this policy excludes any liability arising out of Motor Vehicle Act. It is also agreed that during the currency of this policy, the insured will maintain a Motor Insurance Policy Insuring third party liability for the vehicles registered for general road use as per Motor Vehicle Act. Notwithstanding any provision to the contrary, this Insurance e excludes any loss, damage, liability, expense, fines, penalties or any other amount directly or indirectly caused by in connection with, or in any way involving or arising out of any of the following including any fear or threat thereof, whether actual or perceived: Any infectious disease, virus, bacterium or other microorganism (whether asymptomatic or not); or Coronavirus (COVID-19) including any mutation or variation thereof; or Pandemic or epidemic, as declared as such by the World Health Organization or any governmental authority.

Excess :Air freight: 5 % of the air freight incurred per Claim

Notwithstanding anything to the contrary mentioned herein, the liability under Motor Vehicle Act is excluded from this policy.

Terrorism Damage Clause

Communicable Disease Exclusion Endorsement Clause

Sanction Limitation and Exclusion Clause

We shall not be deemed to provide cover and shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that to us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

Infectious Disease/ COVID-19 Exclusion Clause

Notwithstanding any provision to the contrary, this insurance excludes any loss, damage, liability, expense, fines, penalties or any other amount directly or indirectly caused by, in connection with, or in any way involving or arising out of any of the following-including any fear or threat thereof, whether actual or perceived -:

- *Any infectious disease, virus, bacterium or other microorganism (whether asymptomatic or not); or*
- *Coronavirus (COVID-19) including any mutation or variation thereof, or*
- *Pandemic or epidemic, as declared as such by the World Health Organization or any governmental authority.*

If the insurer alleges that, by reason of this exclusion, any amount is not covered by this Agreement, the burden of proving the contrary shall rest on the Insured. BI claim arising out of Lockdown/ Shut down of units due to Government order will not be payable.”

12. From the above clause, it transpires that if the vehicle is not insured and coming the other category of the vehicle than that, third party policy is required under the Motor Vehicle Act and liability under the Motor Vehicle Act is excluded

from that policy and that clause is made for other purpose, however, for the third party liability, the premium has already been paid and in view of that the contention of the learned counsel appearing on behalf of the insurance company is not being accepted by this Court and this aspect of the matter has also not been proved by the appellant /insurance company by way of leading any evidence before the learned Tribunal and the learned Tribunal has given a finding considering all aspects of the matter and as such, there is no illegality in the impugned order. So far as the interest part is concerned, the Court finds that the interest of only 6% per annum was allowed and on failure of payment within time, 9% was added and that is also not illegal. As such, this appeal fails, and accordingly, Misc. Appeal No. 69 of 2024 is, hereby, dismissed.

13. It has been pointed out that the awarded amount along with interest has already been deposited before the learned Tribunal, and in view of that, the learned Tribunal will release the said amount in favour of the claimants on proper verification.

14. The statutory amount deposited by the appellant/ Insurance Company in the present appeal, that shall be returned back to the appellant/ Insurance Company.

(Sanjay Kumar Dwivedi, J.)

SI/
A.F.R.