IN THE HIGH COURT OF JHARKHAND AT RANCHI

M.A. No. 441 of 2017

The Branch Manager, The New India Assurance Company Ltd., Ashoka Automobile Building, 2nd Floor, Main Road, Ranchi-834001 through Branch Manager, New India Assurance Company Ltd., Hazaribagh (Insurer of Tanker No. JH-01S-3003) vide Policy No. 540300/31/08/91/00000282, w.e.f. 19.04.2008 to 18.04.2009, represented through its Dy. Manager and Incharge, T.P. Hub, Ranchi, The New India Assurance Company Ltd., Ranchi Division, Sethi Corporate, 2nd Floor, P.P. Compound, Main Road, Ranchi, P.O. and P.S. Hindpiri District Ranchi, Jharkhand. … …... **Opposite Party No. 2/Appellant**

Versus

1. Dewanti Devi, wife of Late Mahesh Ram.
2. Ahshaesh Kumar Paswan, son of Late Mahesh Ram, Claimant No. 2 is minor represented through his mother and natural guardian Dewanti Devi/Claimant No. 1, both are resident of village Kedhi Kala, P.O. and P.S. Hunterganj, District-Chatra, Jharkhand

…………… **Claimants/Respondents**

3. Sanjeev Prakash, son of Sri R.C. Ram, resident of Burdwan Compound, P.O. and P.S. Lalpur, District Ranchi, Jharkhand.

………… **Opposite Party No. 1/Respondent**

CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mr. G.C. Jha , Advocate
For the Respondents: Mr. Bibhash Sinha, Advocate

09/Dated: 17.04.2026

I.A. No. 6466 of 2017

1. This I.A. seeks condonation of delay of 11 days. The delay of 11 days is condoned because sufficient cause has been shown. I.A. No. 6466 of 2017 stands disposed of.

M.A. No. 441 of 2017

2. Heard Mr G.C. Jha, learned counsel for the appellant, and Mr Bibhash Sinha, learned counsel for the respondent nos.1 and 2 - claimants.

3. Since 2017, 3rd respondent, i.e. the owner of the insured vehicle, has not been served in this appeal. In the meantime, the claimants have been unnecessarily deprived of the compensation determined in their favour.

4. Mr Jha, learned counsel for the appellant, submits that in this case offending vehicle was an Oil Tanker. He submits that there is no evidence on record to show that the driver of this Oil Tanker had the necessary licence for carrying hazardous goods. Also, plying an Oil Tanker requires a permit, and there is no evidence on record to show that this Oil Tanker had the necessary permit. On these grounds, Mr Jha submits that there was a fundamental breach of the terms of the insurance policy and no liability could have been foisted on the appellant-Insurance Company. Mr Jha, in the alternative, submits that this was, at the highest, a fit case for making an order for ‘pay & recover’.

5. The learned counsel for the claimants submits that the pleas now sought to be raised were never raised in the written statement filed by the Insurance Company. He submits that in the absence of any such pleas being raised or pressed before the Tribunal, such a plea should not be considered at the appellate stage for the first time. He submitted that the appellant-Insurance Company has also not discharged the burden of establishing that there was any breach of the terms of the insurance policy. He submitted that even assuming there was any merit in the plea raised, that would only entail a pay-and-recovery order. In the meantime, there was no warrant to deprive the claimants of the compensation payable to them.

6. Considering the only two grounds raised in support of this appeal, the written statement of the appellant-Insurance Company, the copy of which was duly handed in by the learned counsel for the appellant, was perused. On such perusal, neither of the two grounds now urged in this appeal appears to have been raised.

7. Quite vaguely, in paragraphs 10 and 15 of the written statement, it is pleaded that it was the duty of O.P. 1 (owner of the insured vehicle) to file all vehicular documents, including the driver of the offending vehicle's valid driving licence. Further, in paragraph 15, it is equally vaguely pleaded that the owner of the vehicle has not filed a copy of the permit of the offending vehicle.

8. The above averments hardly amount to raising a defence based upon fundamental breach of the terms of the insurance policy.

9. Besides, from perusal of the impugned award, it is seen that not even an issue was framed regarding the points now urged for the first time in the appeal. There is nothing in the impugned award to suggest that such points were even pressed or any application was made for the recasting of issues.

10. It is well settled that the burden lies on the party alleging a fundamental breach of the terms of the insurance policy. Since, in this case, the appellant-Insurance Company alleges breach, the burden was on the Insurance Company. Neither are there any proper pleadings raising this defence, nor is there any proof in support of these two points.

11. Accordingly, there is no merit in this appeal. The appeal is dismissed without any order for costs.

12. In this case, although an award was made on 19.04.2017, the claimants have received no compensation to date. Therefore, the appellant-Insurance Company is directed to deposit in this Court the entire compensation award, together with interest, after adjusting the statutory deposit amount, within six weeks from today. The Registry will accept the deposits even during the vacations. The deposit should be made with intimation to the learned counsel for the claimants.

13. Once the amount is deposited, the Registry will transmit the same into the claimants' bank account upon the learned counsel for the claimants furnishing their identity and bank details. Under no circumstances should the amount be paid other than through banking channels.

14. The appeal is disposed of in the above terms without any order for costs.

15. Pending Interlocutory Applications, if any, will not survive and are disposed of.

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

April 17, 2026
Manoj/Sharda/-

Uploaded on 20-Apr-26