

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Misc. Appeal No.254 of 2020

Branch Manager, National Insurance Company Limited, Dumka Branch Office, Sunshine Gali, Main Market, Dumka, P.O., P.S. & District Dumka (Jharkhand), through its Jharkhand Legal Cell, Kutchery Road, P.O. Ranchi University, P.S. Kotwali, District Ranchi Appellant

Versus

1. Golhar Bibi, wife of Late Jahrul Mian @ Jaharul Mian
2. Tosif Ansari, son of Late Jahrul Mian @ Jaharul Mian
Respondent no.2 is minor and is represented through his mother and natural guardian, Golhar Bibi, respondent no.1, both resident of Village and P.O. Moglabandh, P.S. Pakuria, District Pakur
3. Santosh Pal, son of Prafullo Pal, resident of Village and P.O. Moglabandh, P.S. Pakuria, District Pakur Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Manish Kumar, Advocate

For the Respondents : Mr. Yasir Arafat, Advocate

Order No.07 / Dated :09.09.2025

Insurance Company is in appeal against the judgement of award of compensation of Rs.30,94,000/- under Section 166 of the Motor Vehicle Act for the death of Jahirul Mian @ Jaharul Mian in a motor vehicle accident on 13.01.2018 while he was travelling on a pick-up van bearing registration no. JH 04D 9416.

2. The factum of accidental death and that the Pick-up van was under the insurance cover with the appellant- Insurance Company is not in dispute.
3. The appeal is preferred mainly on the following two grounds. Firstly, the deceased was travelling as per the F.I.R. as well as deposition of eye witnesses in the Pick-up van in the cabin, but only in Cargo bed (Dala), and he cannot be said to be the owner of the goods being carried by the said vehicle. Consequently, he can only be treated as a gratuitous passenger which will amount to breach of the terms and condition of the policy of insurance. Reliance is placed in *National Insurance Company Limited Vs. Cholleti Bharatamma & Others*, (2008) 1 SCC 423 that the Act does not contemplate that the goods carrying a large number of passengers and the owner of the goods means only the person, who travels in the cabin of the vehicle.

4. In this view of the authoritative pronouncement, the deceased cannot be regarded as owner of the vegetables and at best he can be accepted as a gratuitous passenger for which the Insurance Company is not liable to pay compensation amount.

5. The second limb of the argument is with regard to the computation of the income of the deceased wherein, Rs.600/- per day has been accepted as a daily income and Rs.18,000/- monthly income of the deceased. Reliance is placed on *Kirti & Another Vs. Oriental Insurance Company Limited, (2021) 2 SCC 166* para-11, wherein it has been held that no documentary evidence has been led with regard to the income, it should be assessed by taking minimum wage of the deceased at the time of accident. It is further argued that at the time of accident, the income for skilled labour was Rs.300/- per day, but as per the notification of 2019 of Department of Labour, Employment, Training and Skill Development, Government of Jharkhand, the monthly income of skilled worker is Rs. 9867.26/-.

6. It is argued on behalf of the claimants that the definition of Section 147 of the M.V. Act makes it explicitly clear that owner of the goods will not come within the meaning of gratuitous passenger, but it does not specify the place where the deceased was travelling at the time of accident.

7. On the second issue raised at bar on behalf of the Insurance Company it is submitted that C.W. 1 in para 1 and C.W. 2 in para 2 have deposed that the deceased was having a monthly income of Rs.18,000/- from his business of vegetables. This part of the deposition in examination-in-chief has remained uncontroverted in the cross-examination.

8. Having considered the submission advanced on behalf of both sides, it is not factually correct that no cross-examination was made on the point of income on behalf of the Insurance Company. Only two witnesses have been examined. C.W. 2 has stated in his cross-examination that he had no personal knowledge about the income of the deceased. So far C.W. 1 is concerned, she is the wife and has given bald statement with regard to his income. On this evidence, there is merit in the submission as advanced on behalf of the Insurance Company that the Tribunal, has without judicial scrutiny accepted income of the deceased without any supporting documentary evidence. In view of ratio laid down by the Hon'ble Supreme

Court discussed above where there is no documentary evidence, the income has to be assessed on the basis of the minimum wages as admissible in case of semi- skilled labour. Taking the income of the deceased to be Rs.9,867.26 for skilled labour as per minimum wage notification of 2019, age of the deceased to be 38 years, 1/3rd as the personal and living expenses of the deceased, after future loss of income at the rate of 40% and taking the multiplier of 15 the final compensation amount will work out as under:-

Annual Income	Rs.1,18,404/-
Annual dependency after deducting 1/3 rd on the living and personal expenses of the deceased	Rs. 78,936/-
Loss of dependency on taking a multiplier of 15	Rs.11,84,040/-
Future prospect @ 40%	Rs. 4,73,616/-
Conventional head	Rs.70,000/-
Total	Rs.17,27,656/-

9. With regard to the second question, whether the deceased was travelling as a gratuitous passenger, as he was not travelling in the cabin of the Pick-up van, it has come in the F.I.R. (Exhibit 1) that at the time of accident four persons were travelling on the Cargo Bed (Dala) of the said offending vehicle. In view of ratio laid down by the Hon’ble Apex Court as discussed above since he was not travelling in the cabin, he cannot be regarded as owner of the vegetables so as to come within the meaning of Section 147 of the M.V. Act.

10. Under the circumstances, the deceased was travelling as gratuitous passenger which amounted to breach of the terms and conditions of the insurance policy. The Insurance Company shall therefore have a right of recovery after paying the compensation amount.

11. In this view of the matter, the Insurance Company will be liable to pay the compensation amount and will have right to recovery from the owner of the vehicle. The Insurance Company is directed to pay final compensation **Rs.17,27,656/-** with 7.5% interest to the claimants within a month of this order to the Tribunal which will be disbursed after proper identification. The statutory amount deposited at the time of filing of claim

case, will be remitted to the Tribunal for being disbursed to the claimants and being adjusted in the final compensation amount.

Miscellaneous appeal is accordingly, allowed.

Pending interlocutory application, if any, stands disposed of.

(Gautam Kumar Choudhary, J.)

Anit