

IN THE HIGH COURT OF JHARKHAND AT RANCHI

[Civil Miscellaneous Appellate Jurisdiction]

M.A. No. 379 of 2019

Bajaj Allianz General Insurance Co. Ltd. .... .. Appellant(s)  
Versus

1.Prabha Devi

2.Roshan Kumar

3.Aradhana Kumari

4.Nikita Kumari

5.Subham Kumar

6.Jawed Akhtar

.. .... Respondent(s)

.....  
**CORAM :HON'BLE MR. JUSTICE KAILASH PRASAD DEO**  
**(Through :-Video Conferencing)**

.....  
For the Appellant(s) : Mr. Alok Kumar, Advocate.

For the Respondent :  
.....

04 / 09.02.2021. Heard, learned counsel for the appellant.

Learned counsel for the appellant -Bajaj Allianz General Insurance Co. Ltd. has preferred this Misc. Appeal against the award dated 15.05.2019 passed by learned District Judge-I-cum- P.O., M.A.C.T., , Dhanbad, in Motor Accidents Claim Case No.201 of 2012, whereby the claimants, 1.Prabha Devi, 2.Roshan Kumar, 3.Aradhana Kumari, 4.Nikita Kumari and 5.Subham Kumar have been awarded compensation to the tune of Rs.5,96,500/- to be paid by defendant No.2 -Bajaj Allianz General Insurance Co. Ltd. along with interest @6% per annum from the date of institution till the date of payments.

Learned counsel for the appellant has submitted that from perusal Para-4 of the impugned award, it appears that on the basis of fardbeyan of Roshan Kumar (claimant No.2), Chirkunda P.S Case No.25 of 2011 dated 7.2.2011 has been registered under Sections 279, 304A IPC against unknown vehicle driver. After due investigation, final report has been submitted as occurrence to be true, but the I.O. has not been able to ascertain about the vehicle and driver. Thereafter, complainant, Roshan Kumar filed protest-cum-complaint petition in the court of learned C.J.M, Dhanbad,. Accordingly, Complaint Case No.1318 of 2011 has been registered and after enquiry, learned court found prima facie case under Sections 279, 304A IPC against Driver, Md. Kabir and owner, Jawed Akhtar Khan. The said owner, Jawed Akhtar Khan has appeared before the learned Tribunal and filed written statement denying the accident and involvement of the vehicle in the alleged occurrence.

Learned counsel for the appellant has further submitted that Insurance Company has been made liable only because the Tempo bearing Registration No.JH-10W-8498 of Jawed Akhtar Khan has been subsequently made accused on

the protest petition and that order was passed without impleading the Bajaj Allianz General Insurance Co. Ltd. as party as it was a criminal case but genesis of this case against Bajaj Allianz General Insurance Co. Ltd. is by the order of the learned C.J.M., on protest petition and the order of cognizance being taken in the case against the vehicle bearing registration JH-10W-8498 which was insured before the Bajaj Allianz General Insurance Co. Ltd., as such, serious prejudice has been caused upon the Insurance Company.

Learned counsel for the appellant has further submitted that the order taking cognizance is prejudicial to the interest of the Insurance Company which has been passed ex-parte and the insurance company has no defence if the said order is not set aside. In such view of the matter, the Insurance Company is ready to deposit the awarded amount with interest on condition that this Court may direct to deposit the same and operation of the impugned order may be stayed for the present, so as to avail legal remedy available to the Insurance Company under law.

Considering the same, the appellant- Insurance Company is directed to deposit amount of compensation of Rs.5,96,500/- with interest @6% per annum from the date of institution till the payment within 90 days in Execution Case No.95 of 2019 pending in the Court of District Judge-I-Cum Presiding Officer, Motor Accident Claims Tribunal, Dhanbad.

The monthly interest accrued from the same be paid to the claimants subject to the condition that the claimants shall file an affidavit before the executing court that they have already appeared before the High Court in **M.A. No. 379 of 2019**.

Let notice be issued to all the respondents [ 1.Prabha Devi, 2.Roshan Kumar, 3.Aradhana Kumari, 4.Nikita Kumari, 5.Subham Kumar and 6.Jawed Akhtar] under both processes i.e. under Registered Cover with A/D as well as under Ordinary process, for which, requisites etc., must be filed within two weeks.

If the aforesaid amount is deposited within 90 days, the learned Executing Court, Dhanbad shall not proceed in Execution Case No.95 of 2019, failing which, the Executing Court shall proceed in the matter.

The principal amount shall remain intact.

I.A. No.228 of 2020 stands disposed of.

**(Kailash Prasad Deo, J.)**