IN THE HIGH COURT OF JHARKHAND AT RANCHI

Miscellaneous Appeal No. 358 of 2024

Sunil Kumar, age about 27 years, S/o Lakhindar Kumar, R/o Sector-4D, Ravidas More, Bokaro Steel City, P.O & P.S. Bokaro, District Bokaro, Jharkhand. ... ... Appellant

Versus

1. Divisional Manager, Bajaj Allianz General Insurance Co. Ltd. City Centre, Sector 4, B.S City, P.O & P.S - Bokaro, District- Bokaro, Jharkhand.
2. Chunchun Rai, age about 50 years, S/o Dulu Rai
3. Meera Devi, age about 48 years, W/o Chunchun Rai.
   Both Respondent No. 2 & 3 are R/o Dundibag Hatiya, Near Durga Mandap, P.O & P.S.- Sector 12, Bokaro District Bokaro, Jharkhand.
4. Dharmendra Kumar, age about 37 years, S/o Late Keshav Singh, R/o Kalibadi, Kahatal, Sector-9, P.O & P.S Harla, District - Bokaro, Jharkhand. ... Respondent

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CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mr. Arvind Kumar, Advocate
Mr. Arun Kumar Pandey, Advocate
For Resp. No.1: Mr. Pratyush Kumar, Advocate
For Resp. 3: Mr. Ranjan Kumar, Advocate

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07 /Dated: 20.02.2026

1. Heard learned counsel for the parties.

2. The appellant, who is the owner of the offending vehicle challenges the impugned judgment and award dated 26.07.2024 mainly on the ground that the Insurance Company should not have been absolved of its liability to indemnify the appellant.

3. The appellant succeeded in obtaining *ad-interim* relief from this Court on 13.10.2025 without depositing any amount. Because the matter could not reach, the *ad interim* order was extended from time to time. Finally, on 13.02.2026, this Court, while extending the *ad-interim* order directed the learned counsel for the appellant to obtain instructions as to how much amount the applicant/appellant will deposit as a pre-condition for further extension of stay. The matter was then posted for 20th February, 2026.

4. On 20th February, 2026 i.e. today, the learned counsel for the appellant submitted that he was prepared to argue the entire appeal because he was confident that there was no breach of the insurance policy or of the provisions of Section 147 of the Motor Vehicles Act and therefore, the appeal itself may be heard finally. He submitted that he had no instructions to make any statement about deposit of any amount in this Court as a pre-condition for extension of the stay. In short, the appellant was insistent upon interim relief without making any deposit whatsoever.

5. Considering the plight of the claimants, who are the parents of the deceased Suraj Kumar, the appeal was taken up for final hearing at the request of the learned counsel for the appellant.

6. Mr Arbind Kumar, the learned counsel for the appellant, submitted that in this case, there was evidence that the deceased had hired the pick-up van for his business purposes of purchasing vegetables, and therefore, he could not have been regarded as a gratuitous passenger of the goods vehicle. He referred to the deposition of the claimants' witnesses and submitted that their evidence shows that the deceased had hired the pick-up van and was not some gratuitous passenger in the goods vehicle.

7. Mr. Arbind Kumar further submitted that the pick-up van does not require any permit and therefore, no liability could have been fastened upon the owner of the pick-up van in this case.

8. The learned counsel for the Insurance Company submitted that the appellant never examined himself, though he would have been in the best position to establish whether the pick-up van was indeed hired by the deceased and the deceased was not merely a gratuitous passenger. He submitted that the evidence of the claimant and the witnesses nowhere

says that the pick-up van was hired; instead, the evidence establishes that the deceased was one of the 5 passengers travelling on the '*Dala'* of the pick-up van. Therefore, he submitted that the Insurance Company was correctly absolved in this matter.

9. The rival contentions now fall for my determination.

10. As regards the issue of the permit, though the submissions were made by the learned counsel for the appellant, they were never substantiated. In any event, on this ground, a pay and recover order could have been made so that the claimants, who are the parents of the deceased, are not left at the mercy of the appellant, who seems to be determined not to pay any compensation amount at all. To that extent, the impugned award warrants interference.

11. Insofar as the issue of the deceased being a gratuitous passenger in a goods vehicle is concerned, at least the evidence *prima facie* supports the case of the Insurance Company. None of the claimant's witnesses has stated that the deceased had hired the pick-up van and, in that sense, was not a gratuitous passenger of the goods vehicle. Significantly, the appellant, who was in the best position to depose in the matter, has chosen not to step into the witness box.

12. In the above situation, even if some benefit of doubt or liberal construction of the evidence principle is to be adopted still, the proper order to be made would be to direct the Insurance Company to first pay the compensation amount and then to recover the same from the appellant herein under the principle of pay and recover.

13. The evidence in this matter, if liberally construed, may suggest that the deceased and other passengers were travelling to the vegetable market to procure vegetables. There is also evidence that the deceased

was a vegetable vendor. Considering this material, the proper order to be made would be that of pay and recovery.

14. Accordingly, this appeal is partly allowed and the Insurance Company is directed to satisfy the impugned award in the first instance and then to recover such amount from the appellant by filing for execution. If the appellant has till date not sold his pick-up van, then appellant is restrained from doing so for a period of three months from today so that in the meanwhile, the Insurance Company can file execution for recovery of this amount. It is also open to the Insurance Company to immediately file an execution application and seek attachment of the appellant's immovable property, if any, so that this amount is recovered. However, this is not a case in which the claimants' misery should be prolonged any further.

15. The Insurance Company is directed to issue an account payee cheque or a demand draft in favour of the claimants, as directed in the impugned award, within six weeks. After that, it would be open to the Insurance Company to recover this amount from the appellant. The appeal is disposed of in the above terms. No costs.

16. Pending Interlocutory Applications, if any, do not survive and are disposed of.

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

February 20, 2026

N.A.F.R.

APK/VK

Uploaded on 24.02.2026