

IN THE HIGH COURT OF JHARKHAND AT RANCHI

**M.A. No. 30 of 2026**

Bajaj Allianz General Insurance Company Limited, Address- Pranami Heights, 5<sup>th</sup> Floor, Circular Road, Near Lalpur Chowk, PO & PS- Lalpur, Ranchi-834001, represented through Rimpi Banerjee, (aged about 27 years), d/o Sri U.K. Banerjee, its duly authorized signatory posted as Legal Executive, Bajaj Allianz General Insurance Company Ltd., 501, 502, 5<sup>th</sup> Floor, Pranami Heights, Circular Road, near Lalpur Chowk, Lalpur, P.O. & P.S. Lalpur, Ranchi – 8340011.

(Insurer of Vehicle JH-19D-5854)

... Opposite Party No.2/Appellant

-Versus-

1. Karmi Devi, W/o Late Devmohan Korba,
2. Sandeep Korwa, S/o Late Devmohan Korba,
3. Sanoj Korba, D/o Late Devmohan Korba,
4. Raj Korwa, S/o Late Devmohan Korba,
5. Muskan Kumari, D/o Late Devmohan Korba,
6. Mangaldev Korwa, S/o Late Atwa Korwa,
7. Mulli Devi, W/o Mangaldevi Korwa,

(Respondent nos. 2 to 5 being minors and thus are represented through their mother and natural guardian i.e. respondent no. 1 herein)

Respondent nos. 1 to 7 are residents of Village- Chulhamati, P.O. Sarango, P.S. Ghaghra, Sarango, Bishunpur Ghaghra, District-Gumla.

..... Claimants/Respondents

8. Md. Ekuram, S/o Hanif Miya,  
Resident of Tilaiya Tand, P.O. & P.S.- Chandwa, District- Latehar,  
Pin Code- 829 203.

(Owner of Vehicle bearing registration no. JH-19D-5854)  
Jharkhand.

..... Opposite Party No.1/Respondent

-----  
**CORAM: HON'BLE THE CHIEF JUSTICE**  
-----

For the Appellant: Mr Pratyush Kumar, Advocate  
Ms Taru Gupta, Advocate  
Mr Vishwajeetjee Chaturvedi, Advocate  
For the Respondents: Mr Abhijeet Kumar Singh, Advocate  
Mr Vikas Kumar, Advocate  
Mr Agnivesh, Advocate  
-----

**03/Dated: 08.05.2026**

1. Heard the learned counsel for the parties.
2. With the consent of and at the request of learned counsel for the parties, the appeal is taken up for final disposal. This is more so because records and proceedings have been called and are available.
3. This appeal challenges judgment and award dated 25<sup>th</sup> August of 2025 made by Motor Accident Claims Tribunal at Ranchi, awarding the respondents-claimants compensation of Rs. 31,08,000/- with interest @ 7.5% per annum from the date of filing of the claim petition i.e. 21.02.2023 till the date of actual payment.
4. Mr Pratyush Kumar learned counsel for the appellant-Insurance Company firstly submitted that there was clear evidence of the deceased Devmohan Korba being intoxicated at the time of the fatal accident with the insured vehicle. He submitted that this was admitted by AW.1, the deceased's widow, during her cross-examination.
5. Mr Pratyush Kumar submitted that, given the above admission, no liability should have been fixed on the driver of the insured vehicle and, consequently, the appellant Insurance Company. In any event, without prejudice, Mr Pratyush Kumar submitted that this was a case of contributory negligence by the deceased and the compensation awarded should be proportionately reduced.
6. Mr Pratyush Kumar further submitted that there was no evidence about the deceased having a monthly income of Rs. 15,000/-. He submitted that the Minimum Wages Notification, which was referred to in the impugned judgment and award, refers to the

monthly income of Rs. 11987.40/- He submitted that the Tribunal erred in rounding off this figure to Rs. 15,000/- per month. Accordingly, he submitted that the compensation determined is excessive and does not represent 'just compensation'.

7. Mr Pratyush Kumar submitted that the deduction of only 1/5<sup>th</sup> or 20% towards personal expenses of the deceased is also improper and contrary to the law laid down by the Hon'ble Supreme Court in the Case of **Sarla Verma and Others Versus Delhi Transport Corporation and Anr**, (2009) 6 SCC 121. He submitted that in the present case, the father of the deceased should not have been counted as a dependent. In any event, since there were six dependent family members, the deduction should have been 1/4<sup>th</sup>, not merely 1/5<sup>th</sup>.
8. On the above grounds and no others, Mr Pratyush Kumar submitted that the impugned judgment and award warrant interference.
9. Mr Abhijeet Kumar Singh, learned counsel for the respondents-claimants, defended the impugned judgment and award based on the reasoning reflected therein. However, he pointed out that towards loss of consortium, only Rs. 48,000/- had been awarded. Relying on **Magma General Insurance Co. Versus Nanu Ram**, (2018) 18 SCC 130, he submitted that a compensation of Rs. 48,000/- should have been awarded to each of the claimants and not merely Rs. 48,000/- towards loss of consortium for all the six claimants.

- 10.** Mr Abhijeet Kumar Singh submitted that the deceased was merely crossing the road and received fatal injuries on account of the insured motor vehicle driver driving the motorcycle in a rash and negligent manner. He pointed out that the FIR, followed by a charge sheet, was filed against the driver of the motorcycle.
- 11.** Mr Abhijeet Kumar Singh submitted that the widow's evidence must be read holistically. He submitted that she had admitted that she was not present at the accident site. He also pointed out that Ext. 3 – The post-mortem report did not show any traces of alcohol and other intoxicating substances. Therefore, he submitted that the finding of rashness and negligence on the part of the motorcycle driver warrants no interference. He submitted that it was not a case of any contributory negligence as now urged.
- 12.** For all the above reasons, Mr Abhijeet Kumar Singh submitted that this appeal may be dismissed but only after modifying the award and awarding additional compensation of Rs. 2,40,000/-.
- 13.** The rival contentions now fall for my determination.
- 14.** The present claim petition has been filed by the widow (aged about 32 years), her four minor children (aged about 15, 07, 04, and 11 months, respectively), and the parents, aged about 58 and 52 years. This claim petition was filed on account of the demise of late Devmohan Korba, who was aged about 39 years when the accident took place on 08.11.2022, when the deceased was crossing the road and the insured motorcycle bearing Registration No. JH-19D-5854 dashed against Devmohan Korba, resulting into the fracture of his right leg and severe multiple injuries on the head

and body. Devmohan Korba succumbed to the injuries while on the way to the hospital.

15. Given the rival contentions, the following points arise for determination in this appeal: -

- (i) Whether the accident took place on account of the intoxication of Devmohan Korba, or due to the rash and negligent driving by the driver of the insured motorcycle?
- (ii) In any event, has the appellant made out any case of contributory negligence on the part of deceased Devmohan Korba?
- (iii) Whether the income of late Devmohan Korba was correctly assessed at Rs. 15,000/- per month by the Tribunal?
- (iv) Whether the deduction towards personal expenses of the deceased should have been  $1/4^{\text{th}}$  and not  $1/5^{\text{th}}$  as determined by the Tribunal?
- (v) Whether the amount of Rs. 48,000/- awarded to the claimants towards loss of consortium is required to be enhanced in view of the judgment of the Hon'ble Supreme Court in the case of **Magma General Insurance Company (supra)**?

16. So far, points nos. (i) and (ii) for determination are concerned, the Tribunal framed issue no. 3, which reads as follows:-

*"3. Whether death of Deo Mohan Khotwa @ Devmohan Korwa was result of road traffic accident dated*

*08/11/2022 involving a motorcycle bearing Reg. No. JH-19D-5854? Is it a case of contributory negligence?"*

- 17.** The appellant has relied upon the deposition of AW.1, who is the widow of deceased Devmohan Korba. From her deposition, it is apparent that she was a rustic housewife who was admittedly not present at the time of the accident. AW.1, in her chief, has deposed that her husband had a licence to drive a heavy vehicle. She also deposed that he used to carry his smart card driving licence. She deposed that her husband must have been carrying such a licence with him at the time of the accident, but, owing to the accident, she could not trace it. She has also deposed that she searched for the licence at home and could find an old driving licence, which she was producing before the Tribunal.
- 18.** The issue of a deceased possessing a licence is not very relevant in this matter. Admittedly, the accident took place when the deceased was crossing the road on foot. AW.1, in her chief deposed, that the accident took place due to the negligence of the motorcycle driver.
- 19.** In her cross-examination, however, AW.1 admitted that she was not present at the accident site. She deposed that her husband used to occasionally have a drink, and even on the date of the accident, he may have had a drink. She also stated that at the time of the accident, her husband did not have a driving licence. However, she denied the suggestion that the accident occurred as a result of any mistake on her husband's part.

20. Now the evidence of AW.1 must be considered holistically. Firstly, she is a rustic widow. Upon the conjoint reading of her chief and cross-examination, there is no scope to conclude that the deceased had no licence. In any event, the licence issue is quite irrelevant because at the time of the accident, the deceased was not driving any vehicle; he was merely crossing the road on foot.
21. Based on the statement that the deceased used to occasionally drink or that he may have had a drink on the date of the accident, no case of either negligence on the part of the deceased or even contributory negligence can be said to have been made. The post-mortem report was produced in this matter and marked as Ext. 3. This post-mortem report, which is a part of records and proceedings, does not refer to any traces of alcohol or other intoxicating substances.
22. Admittedly, AW.1, the widow, was not present at the accident site. Therefore, her statement, which speaks about her honesty, cannot be elevated to the status of her husband being a drunk or habitual drunkard and being drunk at the time of the accident.
23. The burden of establishing contributory negligence lay with the party asserting it. Here, even the driver of the motorcycle (insured vehicle) was not examined. There is evidence that an F.I.R. was lodged against the driver of the motorcycle (insured vehicle), followed by his prosecution for rash and negligent driving. The Tribunal accordingly relied on the decisions in **National Insurance Company Ltd. Versus Pushpa Ram, 2007 SCC OnLine Del 1700**, and **United India Insurance Company Ltd Versus Dipak**

**Goyal and Others, (2014) 2 AIC 846 Delhi**, in which it was held that when an F.I.R. is lodged and a charge-sheet is filed, such documents are ordinarily sufficient to establish that the driver of the vehicle was driving rashly and negligently.

24. The evidence in this case shows the impact of the accident on the deceased, who sustained multiple injuries, including fractures. The deceased died while being transferred to the hospital. The Tribunal has therefore correctly invoked the principle of *res ipsa loquitur*. All this, coupled with the fact that the driver of the motorcycle who caused the accident was not examined, is more than sufficient to hold that the accident in this case was caused solely by the rash and negligent driving of the driver of the insured motorcycle, and that there is no material to conclude any contributory negligence.
25. Accordingly, point nos. (i) and (ii) for determination are liable to be answered against the appellant.
26. So far, point no. (iii) for determination, AW.1 has deposed that her husband used to drive a heavy vehicle, and further, she has also disclosed the name of the Truck owner for whom the deceased used to drive the Truck. In the chief, she has stated that her husband was a proficient truck driver earning Rs. 35,000/- per month. Significantly, in the cross-examination, there was not even any challenge to this statement. Even in the impugned judgment and award, there was no serious challenge to the income of the deceased. The Tribunal, after accepting that no documentary evidence was produced regarding the income, held that there was

sufficient evidence on the record to indicate that the deceased was a professional driver who possessed a driving licence.

27. After all this, it is not as if the Tribunal accepted that the deceased was drawing a monthly salary of Rs. 35,000/- but has assessed the monthly salary at only Rs. 15,000/- per month. In such matters, some amount of guesswork is inevitable. Similarly, the mere absence of documentary evidence, particularly regarding persons working in the unorganised sector, cannot be held against such persons or their dependents.

28. The accident occurred in 2022. The Minimum Wages Notification, no doubt, referred to a monthly salary of Rs. 12,000. The Tribunal, upon cumulative consideration of the material on record, has determined the monthly salary to be Rs. 15,000/- per month. There is nothing unreasonable in such a determination. In fact, such determination is well within the bounds and range of reasonability. Accordingly, no case is made out to interfere with the Tribunal's determination.

29. This point no. (iii) for the determination is also answered against the appellant.

30. As regards point no. (iv) for determination, Mr Pratush Kumar relied upon paragraphs 30 and 31 of **Sarla Verma (supra)** which read as follows: -

*“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several*

*subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.*

*31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.”*

**31.** In this case, the number of dependent family members exceeds six. Therefore, there was nothing wrong in the Tribunal deducting 1/5<sup>th</sup> of the annual or monthly income for the purposes of determining compensation towards dependency.

**32.** Mr Pratyush Kumar, however, submitted that paragraph 31 of the **Sarla Verma (supra)** provides that a father cannot be regarded as

a dependent and therefore, the number of dependents should be taken at six and not seven.

33. In paragraph 31, the Hon'ble Supreme Court held that, subject to evidence to the contrary, the father's own income will not be considered as dependent, and the mother alone can be considered as dependent. In this case, there is no evidence that the father had any independent income. Neither the appellant-Insurance Company nor any other respondents to the claim petition asserted that the father had any independent income and, therefore, would not qualify as a dependent. If such assertions had been made in the pleadings, the father might have been required to step into the witness box and show that he had no independent income and was dependent on the deceased's income. On this basis, even point (iv) for determination will have to be decided against the appellant-Insurance Company.

34. Point No. (v) for determination, however, will have to be answered in favour of the claimants. In the case of **Magma General Insurance Company (supra)**, the Hon'ble Supreme Court held that compensation for consortium must be awarded to each of the claimants. Here, the Tribunal has awarded only Rs. 48,000/- as compensation to the consortium. This means that compensation has been awarded to only one of the claimants, not to all. An amount of Rs. 2,88,000/- must therefore be further awarded to ensure consortium compensation for each of the claimants.

35. It is the duty of the Tribunal and, consequently, this Court, to determine and award 'just compensation'. Such an award does not

depend upon any claim by the claimants. It is well settled that the Tribunal may award compensation in excess of what may be claimed by the claimants, because it is the duty of the Tribunal to determine and award just compensation.

**36.** This court, hearing an appeal against the Tribunal's judgment and award, is also not precluded from awarding just compensation to the claimants. Accordingly, the appellant-Insurance Company's appeal is liable to be dismissed and is hereby dismissed. However, the compensation amount is enhanced from Rs. 31,08,000/- to Rs. 33,96,000/-. The appellant-Insurance Company is directed to deposit the enhanced compensation amount in this Court within four weeks from today. The statutory deposit amount can be adjusted while making such a deposit. The other directions in the impugned award remain unaltered.

**37.** The appellant-Insurance Company has deposited the already awarded amount in this Court. Accordingly, the Registry should transfer this amount to the respondents-claimants via bank transfers, i.e., RTGS/NEFT.

**38.** The learned counsel for the respondents-claimants must furnish bank and identity details to enable the Registry to transfer this amount, together with interest, if any, that shall have accrued on this amount.

**39.** The directions for apportionment and investment remain unchanged. The same will have to be complied with. The Registry, when transferring this amount, must take note of such directions in the impugned award dated 25.08.2025.

- 40.** The Registry should also allow the respondents-claimants to now withdraw the statutory amount and enhanced compensation amount once the same is deposited in this Court within four weeks from today. Necessary intimation should be given to the learned counsel for the respondents-claimants when depositing this additional amount.
- 41.** The registry should transfer the original amount and any additional amount to the respondents-claimants via bank transfers. In this matter, under no circumstances should the amount be transferred to the claimants other than through regular banking channels.
- 42.** The appeal is disposed of in the above terms without any order for costs.

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

**May 08, 2026**

A.F.R.

Manoj/Sharda/Cp.2

Uploaded on 11.05.2026