

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 202 of 2017

Reliance General Insurance Company Limited, having its office at Himalaya House, 8th Floor, 38 BLJ Nehru Road, Kolkata- 700071 (West Bengal), through its Associate Segment Head (Legal Claims) Sri Jitendra Kumar Pandit, son of Sri Rajendra Pandit, residing at 47A1/2, R.K. Ghoshal Road, P.O. & P.S. Kasba, District- Kolkata, PIN 700042 (West Bengal) **... Appellant**

-Versus-

1. Lilmuni Madaiyan @ Lilmuni Madyan, W/o Late Lakhichand Maraiya
 2. Parbati Madaiyan, aged about 16 years, D/o Late Lakhichand Maraiya
 3. Fulmuni Madaiyan, aged about 14 years, D/o Late Lakhichand Maraiya
 4. Albin Maraiya, aged about 12 years, S/o Late Lakhichand Maraiya
 5. Sankar Maraiya, aged about 10 years, S/o Late Lakhichand Maraiya
 6. Maloti Maraiya, aged about 6 years, D/o Late Lakhichand Maraiya
 7. Sanatan Maraiya aged about 4 years, S/o Late Lakhichand Maraiya
- Respondent Nos. 2 to 7 are minor who are represented through their own mother respondent no.1 and all are resident of Village – Kurapahari, P.O. & P.S. Gopikandar, District – Dumka (Jharkhand)
8. Filif Kisku, S/o Bivhishan Jee, residing at village – Dhanushpuja, P.O & P.S. Pakur (T), District – Pakur (Jharkhand) **... Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant : Mr. Sahay Gaurav Piyush, Advocate
 For Respondent Nos.1-7 : None
 For Respondent No.8 : Mr. Kaushik Sarkhel, Advocate

07/16.04.2025 Heard Mr. Sahay Gaurav Piyush, learned counsel for the appellant, Vakalatnama has been filed on behalf of respondent nos. 1 to 7, however on repeated calls, nobody has responded on behalf of respondent nos. 1 to 7 and Mr. Kaushik Sarkhel, learned counsel for respondent no.8, who is the owner of the vehicle in question.

2. This appeal is barred by limitation of 159 days and for condonation of delay, I.A. No.650 of 2020 has been filed by the appellant-insurance company.

3. Learned counsel for the appellant submits that the ground has been taken in the said I.A. for condonation of delay that for the procedure of the company to move file from one table to another table, such delay has occurred and in view of that, the delay may kindly be condoned.

4. Learned counsel for respondent no.8 submits that there is no sufficient explanation in the I.A. and in view of that, the delay may not be condoned.
5. For the reasons assigned in the said I.A., it transpires that there is no sufficient explanation, however, taking lenient view, the prayer made in the said I.A. is allowed and the delay of 159 days in filing the present appeal is, hereby, condoned.
6. Accordingly, I.A. No.650 of 2020 is disposed of.
7. This appeal has been preferred against the judgment and award dated 29.07.2016 passed by the learned District Judge-I-cum Motor Vehicle Accident Claim Tribunal, Pakur in M.A.C.T. Case No.01 of 2012, whereby, the learned Tribunal has been pleased to award a compensation of Rs.20,49,000 in favour of the claimants-respondent nos. 1 to 7.
8. Learned counsel for the appellant submits that the correct policy was not produced before the learned Tribunal and in spite of that, the learned Tribunal has awarded the sum, which is not in accordance with law. He further submits that in view of the wrong policy, liability cannot be fastened upon the appellant and the owner of the vehicle is liable to pay the amount. He also submits that the charge-sheet has not been submitted under relevant sections and in view of that, negligence is also not proved and in view of that, the accident itself is in dispute. He then submits that the postmortem was not done and in spite of that, the learned Tribunal has awarded the sum. On these grounds, he submits that this appeal may kindly be allowed and the impugned award may kindly be set-aside.
9. Learned counsel for respondent no.8 draws attention of the Court to the award and submits that the learned Tribunal has taken care of the

argument advanced by the learned counsel for the appellant herein and has given a cogent reason of approving on the point of policy. He further submits that the accident has taken place and charge-sheet has also been submitted. According to him, relevant sections are immaterial in the case of death. On these grounds, he submits that there is no illegality in the impugned award.

10. From the judgment and award of the learned Tribunal, it transpires that the claimants had filed the claim case for grant of compensation on account of the death of her husband and father, namely, Late Lakhichand Maraiya, who died in motor vehicle accident being Tata Magic (Maxi-CAB) having registration no. JH-15D-8316 for which a case has been lodged being Amrapara P.S. Case No. 46/10 dated 26.06.2010 corresponding to G.R. Case No. 400/10 under Sections 279, 337, 338 IPC against the driver of alleged vehicle bearing no. JH-15D-8316 and after investigation, charge-sheet was submitted against the driver namely, Md. Akhtar Ansar. The further case of the claimants-respondent nos. 1 to 7 was that deceased was the husband of claimant no. 1-respondent no.1 and father of claimant no. 2 to 7-respondent nos. 2 to 7 and due to rash and negligent driving of driver of the aforesaid vehicle, the accident occurred in aforementioned road which resulted into death of deceased and after investigation police submitted charge-sheet and deceased died leaving behind the claimants and the deceased was only earning member of his family and further the claimants' case was that the claimants sustained loss for the immature demise of deceased due to aforesaid accident. Further the claimants' case was that deceased was a carpenter and used to earn Rs. 9,000/- per month. The accident took place on 26.06.2010 at about 12:30 P.M. when the deceased proceeded towards

the market of Amrapara Hatia for purchasing the house hold goods.

11. The learned Tribunal has framed eight issues to decide the said claim case. Issue no.3 was with regard to valid driving license. Issue nos. 4 and 5 were with regard to rash and negligent driving. Issue no.6 was with regard to whether the vehicle in question was insured at the time of the accident or not. Issue nos. 2, 3, 4, 5, 6 and 7 have been taken together by the learned Tribunal. The learned Tribunal has taken into account the oral evidence adduced on behalf of the claimants.

12. C.W.1- Jaldhar Mandal has stated that the deceased died before him on 26.06.2010 in the evening on the verandah of Alam Nursing Home and he was skilled carpenter and he earned Rs.300/- per day, but he has not seen any document with regard to his income.

13. C.W.2- Lil Muni Maraiya has deposed that her husband died due to motor vehicle accident on 26.06.2010 and at the time of death of her husband, his age was 34 years and he was working as a skilled carpenter and he earned Rs.300/- per day. She has further stated what has been incorporated in the FIR.

14. C.W.3- Liyakat Ali has deposed that after the accident, he along with other persons brought the deceased to Primary Health Centre, Amrapara for his treatment and the deceased was admitted there, but thereafter he was referred for better treatment and near Alam Nursing Home, Pakur, the injured victim died. He has also remained constant on the point of earning.

15. Respondent no.8- owner of the vehicle in question has deposed that all the documents submitted by him are genuine regarding the said vehicle and the policy number of that vehicle is 2410792320041417 and the policy

number 2410792320004147 is not related with the vehicle.

16. While dealing with the issue with regard to policy, the learned Tribunal has relied upon the judgment passed by the Hon'ble Patna High Court in the case of ***Branch Manager, New India Assurance Co. v. Nakul Sah and others***, reported in ***2002 (1) PLJR : 2002 (50) BLJR 373*** and has come to the conclusion that when the policy is disputed and it is the duty of the insurance company to produce the same. Paragraphs 7 and 8 of the said judgment read as under:

"7. Andhra Pradesh High Court in the case of New India Assurance Co. Ltd. v. Anga Chinni Babu 1992 ACJ 281 (AP), under similar circumstances, has held that when the claimants furnished the number of the policy, it is the duty of the insurance company to produce the policy and on failure, the court is rightly justified in drawing an adverse inference.

8. In the present case also, this court finds that even in this court the appellant has failed to produce a copy of the policy, the number of which has been furnished by the claimants in the court below itself, despite opportunity granted."

17. Merely providing a wrong policy number by the claimants, liability of the insurance company cannot be ruled out because the claimants are not supposed to know the exact policy number and they have gathered the same from somewhere and produced it before the learned Tribunal.

18. In paragraph 20 of the judgment, the learned Tribunal has observed that the insurance company has not produced any evidence to establish that the accident had taken place due to rash and negligent driving by the driver of the offending vehicle. The fact remains that the accident took place and the death has occurred and in view of that, the charge-sheet has been submitted. Merely because postmortem was not done, that was not the fault of the claimants. It was for the police administration to conduct the

postmortem and that aspect has been taken care of by the learned Tribunal by relying the judgment passed by this Court, reported in **2007 (1) JLR 592**.

19. Merely because the relevant sections are not there, that does not mean that the accident has not taken place. The oral evidences of the witnesses are constant on the point of accident and earning of the deceased. The ground taken by the insurance company herein in this appeal is required to prove before the learned Court, however, the appellant-insurance company has failed to prove the same and in view of that, the learned Tribunal has rightly passed the judgment and award.

20. So far as multiplier is concerned, the Court finds that the age of the deceased was 34 years at the time of accident and in view of that in light of the judgment passed by the Hon'ble Supreme Court in the case of **Sarla Verma v. Delhi Transport Corporation**, reported in **(2009) 6 SCC 121**, the multiplication is required to be of 16 in place of 17.

21. In view of the above, the award is modified to the effect that multiplication will be 16 in place of 17. Rest of the award shall remain intact.

22. With the above modification, this appeal is disposed of.

23. Statutory amount deposited by the insurance company shall be transmitted to the learned Tribunal, which will be utilized in satisfying the award in favour of the claimants.

(Sanjay Kumar Dwivedi, J.)

Ajay/ **A.F.R.**