

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 04 of 2024**

1. Kuraisa Bibi, aged about 50 years, W/o Late Asmuddin Ansari,
2. Sadam Ansari, aged about 30 years, S/o Late Asmuddin Ansari,
3. Ijhar Ansari, aged about 22 years, S/o Late Asmuddin Ansari,
4. Intekhab Alam, aged about 24 years, S/o Late Asmuddin Ansari,
5. Sajda Bibi, aged about 35 years, D/o Late Asmuddin Ansari,
6. Rani Khatoon, aged about 22 years, D/o Late Asmuddin Ansari,
7. Ajmeri Khatoon, aged about 20 years, D/o Late Asmuddin Ansari,
8. Sakina Bibi, aged about 80 years, W/o Late Sahabuddin Ansari,

All are R/o village-Dandila Kala, PO & PS - Rehla, District-Palamau, Jharkhand.

..... ... Appellant

Versus

1. Pushpa Devi Gupta W/o Virendra Prasad Gupta, R/o At- Ring Road, Mission Chouk Ambikapur, P.O. and P.S.-Ambikapur, District- Sarguja, State- Chhattisgarh, PIN-497001 (Owner of Offending vehicle No. CG- 15AC-3909)
2. Manager, Oriental Insurance Company Ltd, At- Mahendragarh Road, Near Ambedkar Chowk, P.O. and P.S.-Ambikapur, Chhattisgarh. PIN-230047 (Insurer of the vehicle No. CG-15-AC- 3909).

..... ... Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellants : Mr. Sheo Kumar Singh, Advocate.
For the Ins. Company : Mr. Alok Lal, Advocate.
For the Owner : Mr. P.C. Sinha, Advocate.

15/ 22.01.2025 Heard Mr. Sheo Kumar Singh, learned counsel appearing for the appellants, Mr. Alok Lal, learned counsel appearing for the insurance company (respondent No. 2) and Mr. P.C. Sinha, learned counsel appearing for the owner of the offending vehicle (respondent No. 1).

2. This appeal is preferred being aggrieved and dissatisfied with the award dated 30.11.2023, passed by the learned Principal District Judge-cum-M.A.C. Tribunal, Palamau at Daltonganj, in M.A.C.C. Case No. 21 of 2022, whereby the learned Tribunal has been pleased to dismiss the compensation claim of the appellants.

3. Mr. Sheo Kumar Singh, learned counsel appearing for the appellants submits that the appellants are the legal heirs and successors of the deceased namely Asmuddin Ansari. He submits that the compensation claim application has been filed under Section 163-A of the Motor Vehicle Act for compensation of Rs. 13,20,000/- plus Rs. 60,000/- for mental shock and agony and for expenses in cremation and shradh in social custom and any other amount which is payable under the law. He further submits that on 11.02.2019 at about 23.40 on pitch road at Taranakho, P.S.-Dhanwar, District-Giridih, the driver has lost his control over the alleged offending vehicle and dashed the vehicle in a Neem tree due to which, driver of the vehicle got injured and on the way to hospital he was died and the name of the driver is Asmuddin Ansari, who was aged about 55 years and his monthly income was Rs. 15,000/- per month by way of driving the vehicle of the owner, who is the respondent No. 1. On the basis of fardbeyan of Samin Ansari, Dhanwar P.S. Case No. 34 of 2019 has been registered under Sections 279, 304(A) and 427 of the Indian Penal Code. He submits that on these background, the compensation case was filed, however, the learned court has been pleased to reject the same on erroneous ground. He further submits that the learned Tribunal has only discussed that the claim is not maintainable. Learned counsel has relied in the case of *Ramkhaladi & Anr. Versus United India Insurance Company & Anr.*, reported in (2020) 2 SCC 550.

4. Relying on the above judgment and page-20 of the Memo of Appeal, wherein the insurance coverage paper is enclosed, wherein it has been disclosed that the PA is paid for owner-driver, he submits that the appellants are entitled for Rs. 2 lakhs.

5. Mr. Alok Lal, learned counsel appearing for the insurance company vehemently opposed the prayer and submits that the compensation case was claimed under Section 163-A of the Motor Vehicle Act and since the negligence was on the part of the deceased, the learned Tribunal has rightly passed the said award. He submits that if such a situation is there, no case of interference by this court is made out and he relied in the case of *Nishan Singh & Ors. Versus Oriental Insurance Company Ltd. & Ors.*, reported in MANU/SC/0463/2018 as

well as in the case of *New India Assurance Company Ltd. Versus Vinod*, reported in 2016(4) TAC 449 (Ker).

6. Relying on these two judgments, he submits that once the own action of rash and negligence has proved, the learned Tribunal has passed the said award. He submits that the PA coverage is not for the other person.

7. Mr. P.C. Sinha, learned counsel appearing for the respondent No. 1-owner of the offending vehicle submits that he had employed the deceased Asmuddin Ansari, as a driver of the truck for driving the truck and the accident took place.

8. It is an admitted position that the accident took place on 11.02.2019, in which, the driver namely Asmuddin Ansari died, he was driving the vehicle of respondent No. 1 and the chargesheet was submitted against the driver, thus the accident and the death are proved.

9. In the order of the learned Tribunal, it has not come how the vehicle was being driven rashly and negligently by the deceased. It is an admitted position that the legal heirs and successors of the deceased have claimed the compensation under Section 163-A of the Motor Vehicle Act and they have only stated that the deceased lost the control over the vehicle. Loss may occur due to failure of break or any break down in the vehicle, thus it cannot be said that the deceased was driving the vehicle negligently and rashly.

10. In the case relied by Mr. Alok Lal in the case of *Nishan Singh & Ors. (Supra)*, the issue was of contributory negligence and one party has not been able to prove the factum of rash and negligent driving by driver and in that background, the said order has been passed by the Hon'ble Supreme Court. Identical is the situation in the case of *New India Assurance Company Ltd. (Supra)*, as relied by Mr. Lal of the judgment of Hon'ble Kerla High Court. Thus, those judgments are not helping the insurance company.

11. The insurance policy is available on record, wherein PA cover under Section-III for owner-driver (CSI) is said to be Rs. 2 lakhs, meaning thereby that insurance is there. It is not clear from that if only the owner is driving the vehicle, then only that clause will apply. It is in the form of owner-driver, meaning thereby, whoever is driving the

vehicle, is entitled for and PA cover is there of Rs. 2 lakhs and if such a situation is there, certainly the deceased entered into the shoes of the owner, as has been held by the Hon'ble Supreme court in the case of ***Ramkhiladi & Anr. Versus United India Insurance Company & Anr.***, reported in (2020) 2 SCC 550, wherein the Hon'ble Supreme Court in para-9.8, held as follows:-

“9.8. However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.”

12. In view of the above judgment, the appellants are entitled for a sum of Rs. 2 lakhs with the statutory interest @ 7.5 percent per annum from the date of application. As such, the insurance company is directed to pay Rs. 2 lakhs along with interest @ 7.5 percent per annum to the appellants from the date of application within eight weeks from

today.

13. With the above observation and direction, the award dated award dated 30.11.2023, passed by the learned Principal District Judge-cum-M.A.C. Tribunal, Palamau at Daltonganj, in M.A.C.C. Case No. 21 of 2022, is modified to that extent and this appeal is allowed in part and disposed of as such.

14. At this stage, Mr. Alok Lal, learned counsel appearing for the insurance company submits that the recovery part from the owner may kindly be kept open to the insurance company, in which, the claimants will not be made party.

15. In view of such submission, it is for the insurance company to decide on that aspect of the matter.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-

[A.F.R.]