(2025) 10 JH CK 1336

In the Jharkhand High Court

Case No : Miscellaneous Appeal No 621 of 2018, 166 Of 2021

National Insurance Company Limited APPELLANT

Vs

Mostt. Gayatri Devi RESPONDENT

Date of Decision : 29-10-2025

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2), 166

Citation : (2025) 10 JH CK 1336

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Pratyush Kumar, Prashant Kumar Shrivastava, Manish Kumar, Tarun Kumar, Shashi Kant Thakur

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. Both these appeals arise out of common judgment and award of compensation in Claim Case No. 41/2012 under Section 166 of the M.V. Act, whereby and whereunder liability has been fixed on the Insurance Company to pay compensation of Rs.4,75,000/- with interest @ 6% per annum and in the event of default @ 9% per annum.

2. The Insurance-Company is in appeal in M.A. No.621 of 2018 against the award of compensation, whereby and whereunder, liability has been fixed on it, whereas the claimants have preferred M.A. No.166 of 2021 for enhancement of compensation.

3. The main plank of argument advanced on behalf of the Insurance-Company is two folds. Firstly, the offending vehicle which was under its insurance cover, was a truck and was a commercial vehicle, but not a chit of paper has been filed either on behalf of the owner of the claimant that it was plying under a valid permit. Secondly, it is argued that a driving licence has been adduced into evidence and marked as Ext.-X/3 for identification and from its bare perusal, it

will be evident that the driving licence was valid up to 1912 and 1996, whereas accident took place on 12.10.2011.

4. In this view of the matter, there was a fundamental breach of insurance policy in terms of Section 149(2) of the M.V. Act and therefore, the owner was liable to pay compensation amount. It is further contended that the interest awarded is not as per the ratio laid down by the Hon'ble Supreme Court in Dharampal v. UP State Road Transport, III 2008 ACC (1) interest should have been awarded at 7.5% per annum

5. It is argued by the learned counsel on behalf of the owner of the vehicle-respondent no. 6 that as per the annexure-2 filed on behalf of the Insurance-Company, the driving licence was renewed for another three years.

6. Having considered the submissions advanced, I find that there is a merit with regard to the plea of breach of insurance policy as no valid permit has been adduced into evidence to show that the vehicle was being plied on valid permit. It has been held by the Hon'ble Supreme Court in (2018) 7 SCC 558 Amrit Paul Singh & Another Vs. TATA AIG General Insurance Limited & Ors. at para 24 that the onus to bring the permit on record is on owner of the vehicle and in the event of failure to discharge the onus, it can be inferred that there was a fundamental breach of insurance policy. Therefore, the Insurance-Company will be liable to pay the compensation amount, but it will have a right of recovery against the owner of the offending vehicle (respondent no. 6).

7. It is argued by the learned counsel for the claimants that a meagre monthly income of Rs.3000/- has been taken and future prospects has not been awarded by the learned Tribunal. Further, the compensation awarded under non-conventional head is also not in accordance with the principle of law as laid down by the Hon'ble Apex Court in National Insurance Co. Ltd. v. Pranay Sethi & Ors., (2017) 16 SCC 680

8. Having considered the submissions advanced, I find merit for enhancement of compensation as no amount has been awarded under the head of future prospects.

9. Under the circumstance, taking age of the deceased to be about 40 years, and being self-employed, the claimants will be entitled to enhancement of 40% as future prospects.

Annual Income = Rs.3000/- X 12

Rs.36,000/-

Future Prospect Rs.36,000/- X 40%

Rs.14,400/-

After adding annual income and

Rs.36,000 + Rs.14,400 =Rs.50,400/-

future prospect

Personal and living expense is taken as

Rs.12,600/-

1/4th

After deducting 50,400-12,600

Rs.37,800/-

Multiplier of 15 taking the age of the

Rs. 5,67,000/-

deceased to be 40 as per post-mortem

report

Funeral expense

Rs.70,000/-

Total Compensation

Rs.6,37,000/-

10. Insurance Company is directed to make payment of Rs. Rs.6,37,000/- with interest @ 7.5% from the date of filing of the claim application, within a month of the order, which shall be disbursed to the claimants by the Tribunal on terms fixed by it. Insurance Company shall have a right of recovery against the owner of the vehicle.

Statutory amount be remitted to the Tribunal for disbursement to the claimants.

M.A. No. 621 of 2018 and M.A. No. 166 of 2021 are accordingly allowed.

Interlocutory Application, if any, is disposed of.