

**(2019) 12 JH CK 0213**

**In the Jharkhand High Court**

**Case No : Miscellaneous Appeal No. 27 Of 2017**

Oriental Insurance Co. Ltd

APPELLANT

Vs

Sanjoti Devi And Ors

RESPONDENT

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**Date of Decision : 13-12-2019**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 166

Indian Penal Code, 1860 — Section 279, 304A, 337, 338

**Citation : (2019) 12 JH CK 0213**

**Hon'ble Judges : Kailash Prasad Deo, J**

**Bench : Single Bench**

**Advocate : Ganesh C. Jha**

**Final Decision : Dismissed**

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## **Judgement**

I.A. No.266 of 2017

I.A. No.266 of 2017 has been preferred for condonation of delay of 138 days.

Seeing the grounds urged in the Interlocutory Application, this Court is inclined to condone the delay.

Accordingly, I.A. No.266 of 2017 is allowed.

M.A. No. 27 of 2017

Learned counsel for the appellant Mr. G.C.Jha has submitted that the Oriental Insurance Co. Ltd. has preferred the appeal against the award dated

17.05.2016 passed in Compensation Case No.326/11 passed by Presiding Officer, Motor Vehicle Accident Claims Tribunal, Ranchi whereby the

Claimants have been awarded compensation under section 166 of the M.V. Act to the tune of Rs. 24,15,744/- out of which Rs. 50,000/- has already

been paid under section 140 of the M.V. Act. As such Rs. 23,65,744/- has been

awarded.

The National Insurance Company Limited has been made liable to pay Rs. 16,56,020/- out of Rs. 23,65,744/- with interest @9% from date of filing of

application i.e. 16.11.2011 till realization of the amount. The Oriental Insurance Co. Ltd. has been made liable to pay the remaining Rs. 7,09,724/- in

the ratio of 70:30 along with interest @9% per annum from the date of filing of the application i.e. 16.11.2011 till realization of amount.

This Court has called for a report from the Office regarding any other appeal preferred by the National Insurance Company Limited against the

impugned award.

As per the Office note dated 10.12.2019, it is submitted that no appeal has been preferred against the impugned award by the National Insurance Co.

Ltd.

Learned counsel for the appellant Mr. G.C. Jha has assailed the impugned award on the ground that there was no reason for the Tribunal to fix 30%

liability upon the Oriental Insurance Co. Ltd. Learned counsel for the appellant has submitted that driver of the offending vehicle, insured before the

Oriental Insurance Co. Ltd. has not been charge sheeted by the police, as such, the findings recorded by the learned Tribunal with regard to

contributory negligence upon the offending vehicle is bad in law, as such the Oriental Insurance Company Limited may be exonerated from the liability

by shifting entire liability upon the National Insurance Co. Ltd. Learned counsel for the appellant has further submitted that on these grounds the

appeal may be allowed.

Heard learned counsel for the appellant and perused the impugned award. It appears that Hari Shankar Mahto was travelling from 'Tamar' towards

'Rangamati' by a commander Jeep bearing registration no. JH-01AA-3468 and as soon as the vehicle reached near Ulidih on NH-33, the same was hit

by a truck bearing registration no. JH-05Z-5213 coming from opposite direction towards Tata driven rashly and negligently at excessive speed, dashed

against the Commander jeep, resulting passengers travelling by the jeep sustained grievous multiple injuries upon their person and one of them namely

Hari Shankar Mahto died during course of carrying him to the hospital RIMS, Ranchi on the same date. F.I.R. has been lodged at Tamar Police

Station vide Tamar P.S. Case No.41/11 dated 02.04.2011 against the driver of

truck bearing registration no. JH-05Z-5213 for the offence under sections 279, 337, 338, 304A of IPC. After investigation, the police submitted chargesheet against the driver of the truck only and not against the driver of the commander jeep though it was a case of head on collision. The truck was insured with National Insurance Company Ltd. whereas Commander Jeep was insured with appellant Oriental Insurance Company.

The deceased was a Government Teacher as employed in Rajkiya Madhya Vidyalaya, Malsringa, Kanke Block, Ranchi and he was earning Rs.37,382/- as salary at the time of his death. Since the quantum of award is not under challenge, as such, this Court is not interfering with the same, as the owners of the vehicles have not preferred any appeal, as such this Court is not adjudicating on those aspect of the matter.

However, with respect to interest @9% per annum from the date of filing of the claim application dated 16.11.2011 till its realization, this Court perused the impugned award at para-10 and found that under the conventional head, a sum of Rs. 45,000/- has been paid under three heads, such as funeral expenses as Rs.25,000/-, loss of consortium and love affection Rs.10,000/- and loss of estate Rs. 10,000/- which is contrary to the judgment passed by the Apex court in the case of National Insurance Company Limited vs. Pranay Sethi & Ors. As reported in (2017) 16 SCC 68 0 where a sum of Rs.70,000/- has been awarded under the conventional head i.e. loss of consortium Rs.40,000/-, loss of estate Rs.15,000/- and funeral expenses Rs.15,000/-. From perusal of the impugned award, it appears that on that score the claimants are also entitled for a sum of Rs.70,000/- instead of Rs.45,000/- under the conventional head.

Under the aforesaid circumstances, this Court is not interfering with the award of the learned tribunal along with interest @9% per annum from the date of application dated 16.11.2011 till its realization though as per the judgment of Apex Court in the case of Dharmpal and Sons vs. UP State Road Transport Corporation; 2008 (4) JCR 79 SC it ought to have been @7.5% per annum but the minor change in awarded amount will not make big difference. Awarded amount is just compensation, which is not a windfall gain or bonanza for the claimant rather the same has never been assailed by the claimants for enhancement or by the National Insurance Company Limited, as such, this Court is restrained from interfering with the quantum of

Award.

So far the extent of liability is concerned, even if, driver of the vehicle is not charge sheeted by the police then also contributory negligence cannot be

ignored in a proceeding under the Motor Vehicle Act. Since the vehicle collided head on, on the national highway, the contributory negligence has

been found by the learned Tribunal while deciding Issue no.3, 4 and 5 at para-11 on the basis of material on record and held in para-13 of the award

that it is a case of composite negligence of both the vehicles involved in the accident, accordingly, the tribunal has decided all the three issues in favour

of the applicants/claimants and against O.Ps (owner of vehicles and insurers).

This Court sitting in appeal cannot look into the same without showing any perversity in the findings of the learned Tribunal, only on the basis that the

driver of the Commander jeep has not been chargesheeted. It does not absolve the Insurance Company from the liability which has been saddled by

the Tribunal to the extent of 30%. Accordingly, considering the same, impugned award does not requires any interference by this Court

The Insurance Company is directed to indemnify the awarded amount along with interest in terms of the award passed by the Tribunal with condition

that owners of both the vehicles violated the terms and conditions of the policy, therefore both the O.Ps (Insurance Company) have right to recover

these amount from the owner of the respective vehicles.

The Tribunal is directed to proceed in accordance with law so far payment of compensation awarded to the claimants after taking legal recourse

against the National Insurance Company and also against the Oriental Insurance Company who has already been given right to recovery.

The Registrar General of this Court is directed to release/refund the statutory amount deposited by the appellant at the time of preferring the appeal

within a period of four weeks from the date of filing of the requisition.

In the result, the appeal is hereby dismissed.