(2025) 11 JH CK 1950

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 138 Of 2021, 423 Of 2019

Sikandar Kumar Das APPELLANT

Vs

Rajesh Singh Son of Nityatand Singh RESPONDENT

Date of Decision : 19-11-2025

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 337, 338
Motor Vehicle Act, 1988 — Section 149, 166

Citation : (2025) 11 JH CK 1950

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Prabhash Ch. Sinha, Alok Lal, Santosh Kumar, Alok Lal, Santosh Kumar, Prabhash Ch. Sinha

Judgement

Gautam Kumar Choudhary, J

1. Both these appeals arise of the judgment and award of compensation passed by the learned District Judge-II-cum-MACT, Giridih in Motor Accident Claim Case No. 51/2015, whereby and whereunder, Section 166 of the M.V. Act. a compensation of Rs.28,43,265/- with interest @ 9% per annum has been awarded in favour of the claimants. The Insurance-Company is in appeal against the liability being fixed on it and as well as the quantum of compensation awarded, whereas the claimants have preferred the appeal for enhancement of compensation.

2. As per the case of the claimants, on 12.01.2015 at about 2 p.m. deceased-Savitri Devi, who was going on a motorcycle bearing registration no. JH-11D-5849, met with an accident caused by rash and negligent driving by the driver of the truck bearing registration no.NL-01G-6414. The deceased sustained fatal injuries and died on spot regarding which a case was registered being Giridih (T) P.S. Case No. 10/2015 under Sections 279, 337, 338 and 304(A) of the IPC against the driver of the offending truck.

3. The award of compensation in the instant case is under challenge on the ground that the driver of the offending truck was not having a valid and effective driving licence at the time of accident.

4. It is argued on behalf of the Insurance-Company that it is a case of contributory negligence, as the deceased was travelling on the motorcycle with three persons. It is further argued that the owner and driver had appeared before the learned Tribunal, but the driving licence has not brought on record which will amount to breach of fundamental terms and conditions of the insurance policy in view of the ratio laid down by the Hon'ble Apex Court in Pappu & Ors. Vs. Vinod Kumar Lamba & Anr., (2018) 3 SCC 208.

5. It is further contended that in the FIR there is specific averment that when the accident took place, three persons were riding on the motorcycle and this made out a case of contributory negligence on the part of the driver of the motorcycle. This has not been considered by the learned Tribunal. Reliance in this regard is placed on 2009 (2) JCR 287, Manish Narayan Vs. Seem Bouri & Ors., wherein it has been held that there was no evidence that, the driver, who was driving the vehicle, had valid driving licence and that too with two pillion riders which was not permissible in law and therefore, it was a case of contributory negligence. Ratio of this case has been followed by the Co-ordinate Bench of this Court in M.A. No. 377 of 2019 at para 14.

6. On the quantum part, it is argued that there is no dispute whatsoever that the deceased was a government servant and was getting Rs. 13,000/- per month as salary. However, the learned Tribunal by adding the pension, loss of monthly income has assessed to be Rs. 17,175/-.

7. It is argued by the learned counsel on behalf of the claimants that there is error in computation of the monthly income of the deceased, as she was drawing Rs. 16,922/- at the time of accident. The submission as made cannot be accepted for the reason that Exhibit-4 has been proved on behalf of the claimants where the monthly income has been stated to be Rs. 13,675/-. Therefore, any claim of income beyond this is not tenable.

8. It is also argued that the deceased apart from her salary was also drawing pension of her husband, who had died in harnesss, and after her death, the claimants were deprived of family pension and consequently, loss of Rs. 7000/- per month which was earlier being received. Family pension is a statutory grant to the spouse of the deceased and on her death, the family pension comes to an end.

FINDING

9. It is rather surprising that how the pension has also been added in the monthly income. There cannot be claim under both heads i.e. salary and pension. If the person, who is in service, suffers an accident, his monthly income is to be assessed as per his salary slip and only after his retirement, pension can

be factored. Pension that was accruing to the mother of the claimants after her death, cannot be added, as she was given compassionate appointment and was drawing salary.

10. Here, learned Tribunal has erred in adding pension to assess the monthly income.

11. Taking Exhibit-4 adduced on behalf of the claimants, the monthly income of the deceased is Rs.13,675/-.

12. Learned counsel on behalf of the owner does not appear.

13. However, since driving licence has not been brought on record, either by the owner or the driver, therefore, there is a breach of terms of insurance policy in terms of Section 149 of the M.V. Act and the Insurance-Company will have a right to recovery.

14. With regard to the claim that there were two pillion riders when the accident took place, eye witnesses A.W.-2 and A.W.-3 on the contrary have stated that Savitri Devi was the only pillion rider at the time of accident and no cross-examination has been made on this point. FIR is not a substantive piece of evidence and in absence of any contrary evidence, the plea that at the time of accident there were two pillion riders, cannot be accepted.

15. Under the aforesaid facts and circumstances, the claimants shall be entitled to compensation as under: -

Rs. 13,675/- as monthly income, deceased was aged 40 years, as witnesses have stated and there has not been any cross-examination in this point.

Annual Income = Rs.13675/- X 12

Rs.1,64,100/-

Future Prospect Rs. 1,64,100/- X 40%

Rs.65,640/-

After adding annual income and future prospect

Rs. 1,64,100+Rs. 65,640=Rs.2,29,740/-

Deduction of 50% personal and living expense

Rs. 1,14,870/-

Multiplier of 15 taking the age of the deceased to be 40

Rs. 17,23,050 /-

Conventional Head

Rs.77,000/-

Total Compensation

Rs. 19,14,920/-

16. Under the circumstance, the Insurance Company is directed to make payment of Rs. 19,14,920/- 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. For the reasons as discussed in M.A. No. 386 of 2023, the interest will not be admissible on the compensation awarded under the heading of "future prospect".

Both the Miscellaneous Appeals stand disposed of.

Statutory amount be remitted to the Tribunal for disbursement to the claimants. Interlocutory Application, if any, is disposed of.

