**(2019) 12 JH CK 0254**

**In the Jharkhand High Court**

**Case No :** Miscellaneous Appeal No. 653 Of 2018

United India Insurance Co. Ltd APPELLANT

Vs

Balmukund Singh And Ors RESPONDENT

**Date of Decision :** 17-12-2019

**Acts Referred:**

Indian Penal Code, 1860 — Section 279, 304A
Motor Vehicles Act, 1988 — Section 49(2)
Motor Vehicles Rules, 1989 — Rule 235

**Citation :** (2019) 12 JH CK 0254

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

**Bench :** Single Bench

**Advocate :** Alok Lal

**Final Decision :** Dismissed

## Judgement

Heard, learned counsel for the appellant- United India Insurance Co. Ltd.

The instant appeal has been preferred by the appellant- Insurance Company against the award dated 28.07.2018 passed by District Judge-II-cum-

M.A.C.T., Giridih, in Motor Accident Claim Case No.69 of 2013, whereby the claimant, Balmukund Singh has been awarded compensation to the

tune of Rs.7,02,000/-along with simple interest @ 6% per annum from the date of filing of the claim application i.e. 19.09.2013 till its realization and

further penal interest @ 9% per annum has been awarded after expiry of the 60 days from the date of order.

Learned counsel for the appellant- Insurance Company has submitted that this appeal has been preferred with delay of 3 days and for condonation of

the same, I.A. No.9961 of 2018 has been filed.

Learned counsel for the appellant has assailed the impugned award on three counts-

(i) That personal/individual expenses of the deceased ought to have been deducted @ 50% whereas the learned Tribunal has deducted it @ 1/3

because the claimant is only one person, being son of the deceased.

(ii) Learned counsel for the appellant has further submitted that 9% per annum penal interest has been awarded by the learned Tribunal, which is

contrary to the law. The learned Tribunal on the one hand has granted simple interest @ 6% per annum from the date of filing of the claim application

dated 19.09.2013 till its realization but on the other hand, the Insurance Company has been saddled with penal interest @ 9%, if the Insurance

Company fails to satisfy the award within 60 days of the order.

(iii) Learned counsel for the appellant has further submitted that owner-cum-driver of the vehicle, after due notice had appeared but did not file his

written statement, as such, the documents could not be verified by the Insurance Company, though in para 11 of the impugned award, the learned

Tribunal has given right to the Insurance Company to recover the compensation amount from the claimant, if there is any violation of the terms and

conditions of the Insurance Policy, as such, on these grounds this Court may issue notice to the claimant for reduction of the compensation amount and

also to owner of the offending vehicle to produce the documents for verification.

Heard, learned counsel for the appellant- Insurance Company and perused the impugned award. It appears that on 06.05.2013 at about 07:30 P.M.,

the deceased- Manjho Singh was returning to his house from Chatro Market after selling vegetables. As soon as he reached near Karma river a

vehicle PIAGIO Tempo dashed the deceased due to his rash and negligent driving causing his death on the spot. FIR was lodged vide Deori P.S.

Case No.56 of 2013 dated 06.05.2013 against the driver of the Tempo bearing registration no.JH-11G-4828 under Sections 279 and 304A IPC. After

investigation, police has submitted charge-sheet against the driver of the offending vehicle namely, Md. Kasim Ansari.

The claimant being the son of the deceased had claimed earning of the deceased- Manjho Singh as Rs.10,000/- per month being a labourer and from

cultivation work. Deceased was aged about 40 years at the time of accident. It appears that summon was issued upon the driver-cum-owner of the

offending vehicle, who appeared but did not file his written statement due to which he was debarred from filing written statement. No application

under Rule 235 of the MV Rules has been filed by the Insurance Company before the learned Tribunal for a direction upon the owner-cum-driver of

the offending vehicle to file such documents. It is true that Insurance Company has raised the question of violation of terms and conditions of the

Insurance Policy in terms of the violation of Section 49(2) of the MV Act but no positive evidence has been brought on record in consonance with

pleadings.

From perusal of the same, it appears that the learned Tribunal has considered the income of the deceased to be Rs.4,000/- per month as just and

appropriate. Deceased was in the age group 40 years approximately, as such, multiplier of 15 has been applied. The learned Tribunal has granted

future prospect of self employed person @ 40% in view of the judgment passed by the National Insurance Company Ltd. vs. Pranay Sethi reported in

(2017) 16 SCC 680, considering the age of the deceased on the basis of post mortem report as 40 years which is a rough assessment, as such, benefit

has been given in favour of the claimant because of a socio beneficial legislation. The learned Tribunal has granted Rs.30,000/- i.e. Rs.15,000/- as

funeral expenses and Rs.15,000/- loss of Estate, under the conventional head but no compensation for loss of consortium to the tune of Rs.40,000/-.

Since the claimant has not preferred any appeal for enhancement of the same, as such, this Court is not looking into that aspect of the matter, as

because interest @ 9% per annum was granted as a penal interest after expiry 60 days of the award, which is contrary to the law. On the other hand,

simple interest @ 6% per annum from the date of application i.e. 19.09.2013 is also less in view of the judgment in Dharmpal and Sons Vs. UP State

Road Transport Corporation, 2008 (4) JCR 79 SC.

After considering the entire materials brought on record and perusal of the impugned award nothing has been assailed by the appellant so as to

warrant interference in the impugned award.

Accordingly, the appeal is hereby dismissed affirming the award passed by the learned Tribunal with a right granted by the learned Tribunal to recover

the compensation amount from the owner-cum-driver of the offending vehicle (wrongly written as claimant in the impugned award), if there is any

violation of terms and conditions of the Insurance Policy.

 

The instant appeal is dismissed as devoid of merit.

The limitation petition filed by the Insurance Company vide I.A. No. 9961 of 2018 is hereby closed.

The Insurance Company is directed to satisfy the award in terms of the order passed by the learned Tribunal within a period of 90 days from today. If

the said amount is satisfied the learned Tribunal/Executing court shall not proceed against the Insurance Company, failing which the learned

Tribunal/Executing court shall proceed in accordance with law against the Insurance Company.

The Registrar General of this Court is directed to refund the statutory amount deposited by the appellant at the time of filing of Miscellaneous Appeal,

within a period of four weeks from the date of the filling of the requisition/ application for the same by the counsel for the appellant.