IN THE HIGH COURT OF JHARKHAND AT RANCHI

M. A. No. 311 of 2015

ICICI Lombard General Insurance Company Limited, having its office at Zenity House, Keshavrao, Khadey, Marge, Opposite Race Course, Mahalaxmi, Mumbai-400 034, through the Manager, ICICI Lombard General Insurance Company Ltd., Agra (U.P), Regional Office, Ranchi, Insurer of Vehicle, Main Road, near Big Bazar, Ranchi through its Legal Manager Mr. Dipankar Raoy, Son of Dilip Kumar Roy, resident of Ashirward Mansion, Main Road, P.O & P.S.-Chutia, District Ranchi (Jharkhand).

... … Opposite Party No.3/Appellant

Versus

1. Gayatri Kuar, widow of late Budhdeo Dubey
2. Nitish Kumr Dubey
3. Sahank Shekhar Dubey
4. Abhishek Dubey
5. Sourabh

   Respondent Nos. 2 to 5 are sons of late Budhdeo Dubey and being minor are represented through their mother and natural guardian respondent no. 1 and all are residents of village Dugila, P.O & P.S. Lesliganj, District -Palamau (Jharkhand)

   … … … Claimants/Respondents

6. Shekhar Constructions Pvt. Ltd., 7th Mile Stone Road, Fatch Lead, P.O & P.S. Agra, U.P., Pin 283111, through its Incharge Naresh Sharma, having his office at Amanat Baraj, P.O & P.S. Panki, Palamau
7. Shishir Sardar, son of G. Sardar, resident of Main Road, Chatshila, P.O & P.S. Ghatshila, District-East Singhbhum (Jharkhand)
8. Hirday Kumar Pandey, son of late Kailash Pandey, resident of Village-Ramsagar, P.O & P.S. Lesliganj, District-Palamau (Jharkhand)
9. Jogendra Singh, son of Deo Narayan Singh, resident of Village-Ashehar, P.O & P.S. Panki, District-Palamau (Jharkhand)

... Opposite Parties/Respondents

With

C.O. No. 01 of 2021

1. Gayatri Kuar, (aged about 51 years), W/o Late Budhdeo
2. Nitish Kumr Dubey (Aged about 27 years), son of Late Budhdeo Dubey
3. Sahank Dubey (Aged about 25 years), son of Late Budhdeo Dubey
4. Abhishek Dubey (Aged about 21 years), son of Late Budhdeo Dubey

5. Sourabh Raj (Aged about 19 years), son of Late Budhdeo Dubey
   All permanent resident of village Dugila, P.S. Lesliganj, Post-Bashdih, District -Palamau PIN 822118

…….. Applicants/Respondent No.1 to 5/Cross Objectors

Versus

1. Shekhar Constructions Pvt. Ltd., 7th Mile Stone Road, Fatch Lead, P.S. Agra Kotwali, Post Agra, U.P. Pin 283 111, District Agra (U.P.), at present at I/c Naresh Sharma, at Amanat Baraj, Post and P.S. Panki, Palamau, PIN 822 122

…… Opposite Party No.1/Respondent No.6/Respondent

2. Shishir Sardar, son of G. Sardar, resident of Main Road, Chatshila, Post & P.S. Ghatshila, District-East Singhbhum, PIN 832103

…… Opposite Party No.2/Respondent No.7/Respondent

3. The Manager, ICICI Lombard General Insurance Company Limited, Agra, Post – Agra, P.S. Kotwali, District Agra (Uttar Pradesh), through ICICI Lombard General Insurance Company Limited, Main Road, near Big Bazar, Main Road, P.S. Hindpiri, Post-Ranchi 834001, District Ranchi, now shifted to 1st Floor, Lake View Tower, Kadru Bye Pass Lane, Opposite Canara Bank, P.S. and Post-Doranda, Ranchi-834 002 District Ranchi

…… Opposite Party No.3/Appellant/Respondent

4. Hirday Kumar Pandey, son of late Kailash Pandey, Village-Ramsagar, Post and P.S. Lesliganj, District-Palamau

…… Opposite Party No.4/Respondent No.8/Respondent

5. Jogendra Singh, son of Deo Narayan Singh, Village-Ashehar, Post and P.S. Panki, District-Palamau

…… Opposite Party No.5/Respondent No.9/Respondent

CORAM: HON'BLE THE CHIEF JUSTICE

For the Appellant: Mrs Swati Shalini, Advocate
For the Claimants: Mr Arvind Kumar Lall, Advocate

Reserved on: 28.08.2026 Pronounced **on: 08/09/2026**

1. Heard learned counsel for the parties.

2. This miscellaneous appeal, preferred by the insurer, is directed against the Judgment and Award dated 13.02.2015 passed by the

Claims Tribunal, Palamau at Daltonganj, in M.V. Claim Case No. 56 of 2009, whereby the appellant-Insurance Company has been directed to pay a sum of Rs. 7,10,000/- to the claimants, together with interest at the rate of 6% per annum from the date of filing of the claim petition.

3. Learned counsel appearing for the insurer has assailed the award primarily on two grounds. Firstly, it has been contended that the offending vehicle did not possess a valid permit on the date of the accident and, therefore, in view of the law laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Swaran Singh,** (2004) 3 SCC 297**,** **National Insurance Co. Ltd. v. Challa Upendra Rao,** (2004) 8 SCC 517**,** and **Amrit Paul Singh v. TATA AIG General Insurance Co. Ltd., (2018) 7 SCC 558**, the insurer ought to have been granted the right to pay the compensation and thereafter recover the same from the owner of the offending vehicle. Secondly, it has been contended that the Tribunal adopted an erroneous approach while determining the amount of compensation.

4. The claimants, in turn, have preferred Cross Objection No. 01 of 2021, contending that the compensation awarded by the Tribunal is neither just nor adequate and that the way the same has been computed is contrary to the settled principles governing assessment of compensation as laid down by the Hon'ble Apex Court in several judgments.

5. They also contend that, since the offending vehicle was engaged in road-construction work, the same was not required to possess a permit.

6. In view of the rival submissions, the following points arise for determination: -

(i) *Whether the Tribunal was justified in declining the insurer's prayer for a direction to pay and recover on the ground that the offending vehicle was without a valid permit on the date of the accident?*

(ii) *Whether the compensation awarded by the Tribunal is just and reasonable and, if not, to what extent the same requires enhancement?*

7. Insofar as the first point is concerned, in its written statement, the appellant-Insurance Company, apart from seeking protection of Section 149(2) and S. 134(c) of the MV Act, has proceeded to denying most of the averments in the claim petition. The appellant-Insurance Company has called upon the owner and the driver of the insured vehicle to produce and prove documents like registration certificate, road permit, driving licence, etc. and further pleaded that in case they failed to produce or prove such documents, it should be presumed that there were violations of the statutory conditions of the policy as contained in S. 149(2) of the MV Act. Based upon such a plea, the appellant-Insurance

Company has pleaded that it would not be bound to indemnify the insured.

8. In paragraph 8 of the written statement, the appellant-Insurance Company has admitted that the vehicle involved in the accident was covered under the insurance policy issued by the appellant subject to the terms, conditions, limitations and exceptions contained in the policy which specifically stipulate that the Insurance Company shall not be liable to indemnify the insured against any liability incurred by him in respect of death or bodily injury of any third party caused by the insured vehicle, if the same was allowed to be used without having any road permit, or in violation of the terms and conditions of the permit and the vehicle was being driven by a person not having valid and effective driving licence.

9. The pleadings in paragraphs 8 and 9 nowhere specifically allege that the insured vehicle did not have a permit or was being driven by a person not having a valid and effective driving licence. The pleadings in paragraph 9, as noted earlier, seek to deny everything and place the burden of the owner of the insured vehicle. Paragraph 8 of the written statement merely states that the insurance policy issued by the appellant-Insurance Company was subject to certain terms, conditions, limitations and exceptions contained in the policy. One of the terms was that the appellant-Insurance Company would not be liable to indemnify the insured against any liability incurred by him in case of death or bodily injured to a third party caused by the insured vehicle, if the same was allowed to be used without having the road permit or in violation of the terms and conditions of the road permit, or if the insured vehicle was being driven by a person not having a valid and effective driving licence.

10. The above pleadings cannot be called as any specific and categorical pleadings to the effect that the insured vehicle, in fact, did not have any permit or that it was being driven by a person who had no licence to drive the same. No amount of proof which is not being by pleadings can be ordinarily considered. Besides, in the absence of clear pleadings, there is no question of placing an undue burden upon either the claimants or the owner and driver of the insured vehicle.

11. Admittedly, in this case, the appellant-Insurance Company did not lead any oral evidence or produced any documentary evidence. The appellant-Insurance Company however seeks to place reliance upon Ext. 4 produced by the claimants which is a temporary permit dated 09.12.2009 issued by the Government of Jharkhand in respect of the insured vehicle. In Clause 10 of the temporary permit, the validity of this permit is stated to be from 10.12.2009 to 05.04.2009. The learned counsel for the appellant urges that since the accident took place on 07.09.2009, this Court must hold that the insured vehicle was operating without a permit and for further that such an operation would be in breach of terms and conditions of the insurance policy.

12. The appellant-Insurance Company failed to produce the insurance policy. Therefore, there is no evidence about breach of any specific terms of the insurance policy. The temporary permit was produced by the claimants possibly because these were the documents furnished to the claimants by the police authorities. The appellant-Insurance Company neither summoned any of the RTO Officers nor made any efforts to otherwise establish that the insured vehicle had no permit at the time of the accident. Merely calling upon the owner and the driver of the insured vehicle to produce documents, as was done in paragraph 9 of the appellant-Insurance Company's written statement is not sufficient.

13. In the case of **Swaran Singh (supra)**, the Hon'ble Supreme Court has held that the onus for establishing fundamental breach of the terms of insurance policy would lie upon the insurance company which raises such a plea. Here, there is no specific plea raised by the appellant-Insurance Company. In any event, if the averments in paragraphs 8 and 9 are to be construed as raising of such plea (on a demurer), still, no evidence was led by the appellant-Insurance Company to prove such a plea.

14. In **Swaran Singh (supra),** the Hon'ble Supreme Court has also considered the provisions of Section 149 of the MV Act and held that a bare perusal of the provisions leads only to one conclusion that the usual rule is that once the assured prove that the accident is covered by the compulsory insurance clause, it is for the insurer to prove that it comes within an exception.

15. The Hon'ble Supreme Court referred to MacGillivray on Insurance Law in paragraph 67 and the contents of paragraph 67 are transcribed below for the convenience of reference: -

> ***"67.*** *In MacGillivray on Insurance Law it is stated:*
>
> > *"25-82. Burden of Proof.—Difficulties may arise in connection with the burden of proving that the facts of any particular case fall within this exception. The usual rule is that once the assured has proved that the case comes within the general risk, it is for the insurers to prove that it comes within an exception. It has, therefore, been suggested in some American decisions that, where the insurers prove only that the assured exposed himself to danger and there is no evidence to show why he did so, they cannot succeed, because they have not proved that his behaviour was voluntary or that the danger was unnecessary. Since an extremely heavy burden is imposed on the insurers if they have to prove the state of mind of the assured, it has been suggested in Canadian decisions that the court should presume that the assured acted voluntarily and that, where he does an apparently dangerous and foolish act, such danger was unnecessary, until the contrary is shown. In practical terms, therefore, the onus does in fact lie on the claimant to explain the conduct of the*

assured where there is no apparent reason for exposing himself to an obvious danger.”

16. In paragraph 69 of **Swaran Singh (supra)**, the Hon’ble Supreme Court has held that the proposition of law is no longer *res integra* that the person who alleges breach must prove the same. The Insurance Company is, thus, required to establish the breach which it claims it has alleged by cogent evidence. In any event, the Insurance Company fails to prove that there has been a breach of the conditions of policy on the part of the insured, the Insurance Company cannot be absolved of its liability.

17. In the case of **Narcinva V. Kamat v. Alfredo Antonio Doe Martins**, reported in 1985 ACJ 397 (SC), the Hon’ble Supreme Court while reiterating the principle that the burden is on the insurance company to prove the breach of any of the terms of the insurance policy, it was held that the insured is not under an obligation to furnish evidence to enable the insurance company to wriggle out of its liability.

18. The decision of the **Amrit Paul Singh (supra)** is distinguishable because, in that case, it was clearly demonstrable form the material brought on record that the vehicle at the time of the accident did not have a permit. It was because of this positive evidence that the Hon’ble Supreme Court held that the principle laid down in **Swaran Singh (supra)** or **Lakhmi Chand v. Reliance General Insurance**, (2016) 3 SCC 100, would not be applicable.

19. From this, it is clear that the **Amrit Paul Singh (supra)**, has not dissented from the view taken in **Swaran Singh (supra)** or **Narcinva V. Kamat (supra)**, but only pointed out that these decisions did not apply given the positive evidence on record that the insured vehicle did not any permit at the time of the accident.

20. **Challa Upendra Rao (supra)** merely holds that plying of a vehicle without permit is an infraction and therefore, in terms of the said provision, such defense is available to the insurer. In the said matter, the claimants/owner of the insured vehicle had accepted that there was no permit which covered the insured vehicle, but since there was no permit, the question of violation of any condition thereof did not arise. The Hon'ble Supreme Court rejected this contention and held that a person without a permit to ply a vehicle cannot be placed in a better position vis-à-vis one who has a permit, but has violated the condition thereof. Therefore, in **Challa Upendra Rao (supra),** there was no dispute and in fact, there was positive evidence that the insured vehicle did not have any permit.

21. In the present case, there is no categorical plea that the insured vehicle had no permit and further, the appellant-Insurance Company led no evidence to show that the insured vehicle had not permit. By simply relying upon the document (Ext. 4), it will not be safe to conclude that the insured vehicle had no permit, even though, it required to have one and further that, all these constitute a breach of the terms of the insurance policy.

22. The learned counsel for the claimants in this case has relied on S. 66 of the MV Act which is concerned with a necessity for the motor vehicles having permits under certain circumstances. Section 66(3) however provides that provisions of sub-section (1), which requires certain type of vehicles to have permits, shall not apply to the vehicles listed in Clauses (a) to (q) of the said sub-section. He referred to Clause (f) which, in turn, refers to transport vehicles used for any public purpose as may be prescribed by the State Government in this behalf. The learned counsel for the claimants also relied on Rule 180 which deals with exemption from the provision of the Act.

23. Though, the learned counsel for the claimants was unable to produce any categorical notification to show that a vehicle which was involved in the public purpose of road construction was not required to comply with provisions of Section 67(1) of the MV Act, such contentions only show that if the appellant-Insurance Company had properly pleaded that the insured vehicle had no permit at the time of the accident, then, evidence in support of the above contentions could have possibly been produced by the claimants or the owner/driver of the insured vehicle if such evidence was available.

24. In any event, the burden was on the Insurance Company to plead and prove any fundamental breaches of the terms and conditions of the insurance policy. Here, there are neither any categorical pleadings nor is there any proof. In such circumstances, there is no case made out to disturb the finding recorded by the Tribunal about the liability of the appellant-Insurance Company to indemnify the owner of the insured vehicle.

25. The first point for determination is answered against the appellant-Insurance Company and in the above terms.

26. The next point is whether the compensation determined by the Tribunal represents 'just and reasonable compensation'.

27. The Tribunal assessed the monthly income of the deceased at Rs. 6,000/- principally on the ground that no documentary evidence established the income. The claimants, on the other hand, relied upon the evidence of AW.1, AW.2 and AW.3, who stated that the deceased was earning approximately Rs. 10,000/- per month.

28. It is true that no wage register, attendance record, bank statement, income-tax return or other documentary evidence was produced to establish the precise income of the deceased. The Tribunal, therefore, cannot be said to have acted wholly without basis in declining to accept the claim of Rs. 10,000/- per month in its entirety. At the same time, the absence of documentary evidence does not necessarily justify adopting the lowest figure as the income in every case. The evidence must be considered cumulatively, keeping in view the occupation of the deceased, the nature of his work and the surrounding circumstances.

29. AW.1, Laxman Pandey, deposed that the deceased was engaged as a contractor as well as an agriculturist and earned approximately Rs. 10,000/- per month. In cross-examination, he stated that the deceased was engaged in contract work at the block level and that he had not seen the papers relating to such work. He also stated that he could not say what the deceased earned from the block contracts. He, however, denied the suggestion that his statement regarding the deceased's income was false.

30. AW.2, Chitranjan Dubey, the elder brother of the deceased, also deposed regarding the same occupation and substantially the same income, and in cross-examination stated that he could not specify the commission earned from the block contracts. AW.3, the widow of the deceased, likewise stated that her husband was an agriculturist and earned approximately Rs. 10,000/- per month.

31. Thus, the evidence of all three witnesses is consistent insofar as the occupation of the deceased and the general level of his earnings are concerned. Their evidence was not discredited in cross-examination as to the fact that the deceased was engaged in agricultural as well as contract work. However, documentary proof of the precise figure of Rs. 10,000/- per month is essentially absent. The absence of such documentary evidence, however, cannot by itself obliterate the consistent oral evidence regarding the nature of the deceased's occupation and his earnings.

32. The approach to be adopted in such circumstances stands sufficiently explained by the Hon'ble Supreme Court. In the case of **Chameli Devi v. Jivrail Mian, (2019) 4 SCC 415**, the Court recognised that, in cases involving persons engaged in occupations where formal documentary proof of income may not ordinarily be available, oral evidence can legitimately form the basis of assessment.

33. Likewise, in **Chandra @ Chanda @ Chandraram v. Mukesh Kumar Yadav, (2022) 1 SCC 198**, minimum wages were recognised as a useful yardstick in the absence of documentary evidence, though not as an inflexible measure of actual income.

34. In the case of **Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236**, the Hon'ble Apex Court permitted reasonable guesswork based upon the occupation of the deceased and the surrounding circumstances, while emphasising that the assessment must remain realistic. The principle has also been reiterated in **Oriental Insurance Co. Ltd. v. Kalu Ram, 2026 INSC 653**, wherein it has been recognised that the Court need not mechanically adhere to the lowest figure merely because the precise income has not been established.

35. In view of the aforesaid position, while the claim of Rs. 10,000/- per month cannot be accepted in full in the absence of documentary proof, there is equally no justification for mechanically confining the income to Rs. 6,000/- per month.

36. Having regard to the evidence on record, the nature of the deceased's occupation as an agriculturist and block-level contractor, and the surrounding circumstances, this Court considers it just and reasonable to assess his monthly income at Rs. 8,000/. The said assessment, in the considered view of this Court, strikes a reasonable balance between the oral evidence available on record and the absence of documentary proof of the exact income.

37. Once the income is determined, the other components of the computation follow in accordance with the settled principles. The deceased was about 45 years old, and the Tribunal's application of a multiplier of 14 is not in dispute and calls for no interference. The deceased left behind his widow and four sons, making five dependants in all. Accordingly, a deduction of one-fourth towards personal and living expenses is warranted in terms of **Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121.**

38. The deceased was self-employed and was about 45 years of age. Therefore, an addition of 25% towards future prospects is also warranted in terms of the principles laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680.**

39. The loss of dependency is accordingly worked out as follows:

- **Monthly income = Rs. 8,000/-**

- **Annual income: Rs. 8,000/- × 12 = Rs. 96,000/-**
- **Add 25% towards future prospects = Rs. 24,000/-**
- **Annual income after addition of future prospects = Rs. 1,20,000/-**
- **Less 1/4th towards personal expenses = Rs. 30,000/-**
- **Annual contribution to the family: Rs. 90,000/-**
- **Rs. 90,000/- × 14 = Rs. 12,60,000/-**

40. Accordingly, the loss of dependency comes to Rs. 12,60,000/-.

41. Insofar as the conventional heads are concerned, consortium is payable to each of the five claimants at Rs. 40,000/- each, amounting to Rs. 2,00,000/-, in view of the principles laid down by the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130.** A sum of Rs. 15,000/- is awarded towards funeral expenses and a further sum of Rs. 15,000/- towards loss of estate. No separate amount is, however, payable under the head of loss of love and affection.

42. The total compensation is, therefore, computed as Rs. 14,90,000/-.

43. The aforesaid amount, however, cannot be directed to be paid without considering the amounts already received by the claimants towards the same accident. In this regard, two amounts require adjustment. Firstly, an amount of Rs. 50,000/- has already been paid as interim compensation under S. 140 of the Act. Secondly, the owner of the offending vehicle paid a sum of Rs. 2,50,000/- to claimant No.1 by Cheque No. 311832 dated 25.05.2009 and

Cheque No. 311774 dated 19.06.2009. The said payment was made on account of the death of Budhdeo Dubey in the accident in question.

44. The payment of Rs. 2,50,000/- thus bears a direct nexus with the death arising out of the accident which is the subject matter of the present claim. It cannot, therefore, be characterized as an ex-gratia payment independent of the compensation payable under the Act. The said amount is liable to be considered while determining the balance compensation payable to the claimants.

45. Accordingly, after adjusting Rs. 50,000/- towards the interim compensation already paid and Rs. 2,50,000/- towards the payment made by the owner, the net compensation payable comes to Rs. 11,90,000/-. In addition to this, any statutory amount, if deposited, should also stand adjusted.

46. As regards interest, the Tribunal has awarded interest at the rate of 6% per annum from the date of filing of the claim petition. Having regard to the facts and circumstances of the case, the said rate does not warrant interference and is, accordingly, maintained.

47. The claimants shall, therefore, be entitled to interest at the rate of 6% per annum on the net compensation determined herein from the date of filing of the claim petition till payment.

48. In view of the foregoing discussion, Point No. (ii) is answered by holding that the compensation awarded by the Tribunal requires enhancement and is hereby determined at Rs. 11,90,000/-, after due adjustments of the amounts already paid as indicated hereinabove.

49. Consequently, M.A. No. 311 of 2015, preferred by the Insurer, is **dismissed**. Cross Objection No. 01 of 2021 filed by claimants stands **allowed**. The compensation payable to the claimants is enhanced to Rs. 11,90,000/- from Rs. 7,10,000, together with interest at the rate of 6% per annum from the date of filing of the claim petition till payment.

50. The entire amount shall be apportioned equally amongst all the claimants. Insofar as the shares of the minor children are concerned, the widow of the deceased shall keep their respective shares in appropriate fixed deposits until they attain the age of majority.

51. The appellant-Insurance Company shall deposit the aforesaid compensation of Rs. 11,90,000/-, before this Court within a period of eight weeks from today, together with the interest payable thereon, after giving due intimation to the learned counsel for the claimants.

52. Any amount already deposited pursuant to the impugned award shall be duly given credit for while making such deposit, to avoid duplication of payment. Upon such deposit, the Registry shall permit withdrawal by the claimants by transferring it into their bank accounts, after due verification of their identity and bank particulars. Under no circumstances should the transfers be otherwise than through regular banking channels. The learned counsel for the claimants has agreed to provide the identity and bank details of the claimants so that the transfer of the compensation can be effected at the earliest.

53. The appeal as well as the Cross Objection stands disposed of in the above terms, without any order for costs.

54. Pending interlocutory applications, if any, will not survive and are disposed of.

(M. S. Sonak, C.J.)

September 08, 2026

A.F.R.

Manoj/Ranjeet/Cp.2

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