

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Miscellaneous Appellate Jurisdiction)

M.A. No. 294 of 2023

Bajaj Allianz General Insurance Co. Ltd. having its Office at 804, 8th Floor, Mahabir Tower, Main Road, Ranchi P.S. Hindpirih, P.O. & District-Ranchi at present Parnami Heights, Circular Road, P.S. Lalpur, P.O. & District-Ranchi through its Legal Executive having its office at Parnami Heights, Circular Road, P.S. Lalpur, P.O. & District-Ranchi. Appellant

Versus

1. Munni Kumari, wife of Late Ajeet Kumar
 2. Ankit Kumar, son of Late Ajeet Kumar
 3. Anshu Kumar, son of Late Ajeet Kumar
 4. Kapildeo Prasad, son of Late Genesh Prasad
 5. Amola Devi, wife of Kapildeo Prasad
(Respondent No.2 & 3 are minors being represented through their mother Munni Kumari, Respondent No.1, being their natural guardian as their next friend)
All resident of near Santoshi Mandir, Bhowra Upper Bazar, Bhowra, P.O. and P.S. Bhowra, District-Dhanbad.
 6. Md. Mosinuddin, Son of Md. Sarfuddin Resident of Bhaga Bazar, P.O. Bhaga, P.S. Jharia, District-Dhanbad.
- Respondents

P R E S E N T

HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant : Mr. Alok Lal, Advocate
For the Respondents : Mr. Rajiv Kumar Karan, Advocate

C.A.V. on 26.09.2024 : Pronounced on 01.10.2024

The instant Misc. Appeal has been preferred on behalf of the appellant-Bajaj Allianz General Insurance Co. Ltd. against the award dated 23.06.2023 whereby the appellant has been directed to deposit the compensation of Rs.50,90,176/- to claimants through RTGS or NEFT in the account number of Tribunal i.e. 21060110044674(IFSC-UCBA0002106) of UCO Bank, Civil Court, Dhanbad along with simple interest @ 7.5% per annum from the

date of filing of the claim petition till the payment within one month from the receipt of the order.

2. Further the recovery right has been given to the appellant-Insurance Company to recover the said compensation amount from the owner of offending vehicle No. JH-10BC-0341.

3. The brief facts of the claim petition giving rise to file this appeal are that on 18.08.2018 at about 02:00 p.m. deceased was on foot near the Taxi stand Bhowra, meanwhile Tempo No. JH-10BC-0341 being driven rashly and negligently dashed the deceased as a result of which he sustained grievous injuries and was brought to Jalan Hospital where he was declared dead about 07:30 p.m. during course of treatment. Said accident took place on account of rash and negligent driving of the driver of Tempo No. JH-10BC-0341. The F.I.R. of this case was also lodged with the Jorapokhar (Bhowra O.P.) P.S. Case No. 89 of 2018 on 07.09.2019 under Section 279/304(A) of I.P.C. against the driver of the Tempo No. JH-10BC-0341.

3.1 The deceased was 34 years old at the time of said accident. After his death he left his legal heirs Munnii Kumari, 28 years old, the wife and two minor sons Ankit Kumar and Anshu Kumar, 10 years old and 08 years old respectively and Kapildeo Prasad and Amola Devi, the father and the mother of the deceased. The deceased was lawyer by the profession. His annual income for the assessment year 2014-15 was 1,85,050/-, for the assessment year of 2016-17 was Rs. 2,35,000/- and for the assessment year 2017-

18 was Rs.2,98,820/-. The owner of the said vehicle was Md. Mosinuddin, Son of Md. Sarfuddin, R/o Bhaga Bazar, P.O. Bhaga, P.S. jharia, District-Dhanbad (Jharkhand) and said vehicle was also insured with M/s Bajaj Allianz General Insurance Co. Ltd. The policy number of the same was OG-18-2441-1803-00000935. As such for the same the compensation amount was paid.

4. On behalf of O.P.No.1 owner of the vehicle no written statement was filed.

5. On behalf of O.P.No.2-Insurance Company written statement was filed with these averments answering respondent does not admit the averments made in the claim petition and the petitioners are put to strict proof of those allegations. The driver of the said offending vehicle was not holding a valid and effective driving licence at the time of accident and he was not qualified for holding the driving licence. As such there being the wilful breach of terms and conditions of the policy, the respondent-Insurance Company is not liable to pay any compensation to the claimants. If any liability is saddled i.e. to be upon the respondent No.1 owner of the vehicle. The said vehicle was also plied on the road without permit authorization and fitness at the time of accident. Therefore, Insurance Company is not liable to indemnify the insured i.e. owner of the offending vehicle. As per Section 158(6) of the M.V. Act it was mandatory duty of the concerned Police Station to forward all the relevant documents to the concerned insurer within 30 days from the date of information but the same

has not been complied with. As such this claim petition is liable to be dismissed on the very statutory non-compliance. The alleged accident took place on 18.08.2018 whereas the F.I.R. of the same was lodged on 07.09.2018 after delay of 20 days which shows that the said accident was not genuine. The claimants in collusion with the O.P.No.1 the owner of the vehicle in order to get the wrongful gain has filed this claim petition based on wrong averments. Indeed, it was a case of hit and run accident. The special provision for making claim application in case of hit and run accident has been made under clause 20 of Solatium Scheme, 1989. The said clause 20 provides particular forum i.e. claim enquiry officer of Sub-division or Taluka. In view of the above, the learned Tribunal was not having any jurisdiction to decide the claim petition. In view of the above, prayed to dismiss the claim petition.

6. The learned Tribunal has framed the following issues:
- i. Whether the present suit is maintainable in present form ?
 - ii. Whether there is any cause of action over the present suit ?
 - iii. Whether the deceased namely Ajeet Kumar died in motor vehicle accident due to rash and negligent driving by the driver of Tempo being registration No.JH-10BC-0341?
 - iv. Whether the driver of Tempo being registration No.JH-10BC-0341 had valid and effective license at the time of accident ?
 - v. Whether the Tempo No.JH-10BC-0341 was insured with M/s Bajaj Allianz General Insurance Company Limited at the time of accident ?
 - vi. Whether the Tempo being registration No. JH-10BC-0341 had valid permit at the time of accident ?
 - vii. Whether the dependants of deceased namely Ajeet Kumar on account of his death are entitled for compensation ?

- viii. What the amount/compensation of plaintiffs are entitled from defendants ?
- ix. Whether the plaintiffs are entitled for any relief/reliefs ?

7. In oral evidence on behalf of claimants examined A.W.-1 Munni Kumari, A.W.2-Umesh Kumar and A.W.-3 Umesh Paswan and in documentary evidence following documents were adduced:

1.	Exhibit 1	Certified copy of FIR of Jorapokhar P.S. 89/18
2.	Exhibit 2	Certified copy of charge sheet in Jorapokhar P.S. 89/18
3.	Exhibit 3	Photo copy of postmortem report of deceased Ajeet Kumar
4.	Exhibit 4	Advocate Id. Card of Bihar State Bar Council
5.	Exhibit 5	Original certificate of member of Bihar State Bar Council, Patna
6.	Exhibit 6	Marksheet of Class-X
7.	Exhibit 7	Marksheet of B.A. Part-III
8.	Exhibit 8	Acknowledgement of ITR for AY 2017-18
9.	Exhibit 9	ITR of AY 2017-18
10.	Exhibit 10	TDS for AY 2017-18
11.	Exhibit 11	Mark sheet of LL.B Part-III
12.	Mark X	Photo copy of owner book of Vehicle No.JH-10BC-0341
13.	Mark X/1	Photo copy of Insurance Policy of vehicle
14.	Mark X/2	Photo copy of D.L. of driver Chottan Biswan

8. On behalf of O.P.No.2 D.W.1-Rohit Kumar was examined and in documentary evidence filed Ext. A Insurance Policy of the vehicle No.JH-10BC-0341 and Ext.B Questionnaire.

9. The learned Tribunal after hearing the rival submission of parties, passed the impugned award directing to pay the compensation amount of Rs. 50,90,176/- to the claimants and also directing the Insurance Company to recover the same amount from the owner of the vehicle.

10. Aggrieved from the impugned Award, the instant appeal has been preferred on behalf of Insurance Company.
11. Heard the learned Counsel for the appellant and the learned Counsel for the respondent No.1 to 5 and perused the material on record.
12. The learned Counsel for the appellant-Insurance Company has assailed this impugned Award on the ground that indeed no alleged accident took place by the offending vehicle. The F.I.R. of this case was lodged after 20 days from the date of occurrence against the unknown persons and during investigation the claimants with the connivance of the owner of the offending Tempo had shown the involvement of the offending vehicle in causing the said accident. As such the accident itself was doubtful. The learned Tribunal had not given its finding on this very issue and had directed the Insurance Company to pay the compensation amount giving the recovery rights. It is the settled law that the recovery rights cannot be given when the Insurance Company is not liable at all to pay the compensation amount and in support of the submission, the learned Counsel for the appellant relied upon the case law Anil & Ors. vrs. New India Assurance Co. Ltd. & Ors. in (Civil Appeal No. 3291 of 2011) decided on 19.01.2018 and Balu Krishna Chavan vrs. The Reliance General Insurance Company Ltd. & Ors. 2022 LiveLaw (SC) 932 and also relied the Judgment of the Co-ordinate Bench of this Court In M.A.No. 365 of 2023 HDFC RGO General Insurance

Co. Ltd. Office Divisional Manager, Ranchi through Manager Litigation & T.P. Claim Gandhi Maidan, Patna vrs. Kalicharan Bedia @ Charan Bedia & Ors. Judgment dated 11th July, 2024.

13. Per contra, the learned Counsel for the respondent/claimants vehemently opposed the contentions made by learned Counsel for the appellant and contended that after the accident the injured was taken to the Hospital for treatment. During treatment he died and after his death the time was taken in cremation and thereafter the F.I.R. was lodged against the unknown vehicle by the informant and subsequently the eye-witness of the said accident told to the Investigating Officer in regard to the said accident and the I.O. after having concluded the investigation in Jorapokhar (Bhowra O.P.) P.S. Case No. 89 of 2018 dated 07.09.2018 filed the charge-sheet against the driver of the offending vehicle No.JH-10BC/0341. The claimants have adduced the eye-witness of the occurrence. The factum of accident is well proved, the same cannot be accepted to be doubtful on the mere ground that the F.I.R. was lodged belated against the unknown vehicle.

14. For disposal of this Misc. Appeal, one point of determination arises which is as under:

Whether on 18.08.2018 at 2 O' clock the driver of the Tempo No. JH-10BC-0341 had dashed to the deceased by driving the Tempo rashly and negligently and on account of sustaining injuries he succumbed to injuries.

15. On behalf of the claimants/respondent herein to prove the factum of accident in oral evidence have been examined two eye-witness of the accident. **A.W.2 Umesh Kumar** and **A.W.3 Umesh Paswan** and in documentary evidence has been adduced **certified copy of F.I.R.** of Jorapokhar (Bhowra O.P.) P.S. Case No. 89 of 2018, **Ext.2 Certified copy of charge-sheet** in Jorapokhar P.S. Case No. 89 of 2018, **Ext.3 Photocopy of postmortem report** of deceased Ajeet Kumar, Ext.4 Advocate Id. Card of Bihar State Bar Council of the deceased, **Mark X Photocopy of owner book of Vehicle No.JH-10BC-0341, Mark X/1 photocopy of Insurance Policy of vehicle, Ext. X/2, Photocopy of D.L. of driver Chottan Biswas.**

15.1 **P.W.2 Umesh Kumar** in his Examination-in-chief says he is familiar with deceased Ajeet Kumar. He has seen the accident from his own eye. He was at the spot at the time of accident. The deceased Ajeet Kumar was going to his house on foot. **The driver of the Temp No. JH-10BC-0341 rashly and negligently had driven the same and dashed to Ajeet Kumar causing grievous injuries and ultimately succumbed to those injuries.**

In cross- examination this witness says **he had seen the accident from his own eye.** Police also interrogated him. It is wrong to say that he is giving false evidence in Court.

15.2 **P.W.2-Umesh Paswan** in his Examination-in-chief says that he has seen the accident from his own eyes. **At the time of accident, he was taking food in a nearby Hotel. This**

occurrence took place in his presence. When Ajeet Kumar was going on foot to his house and reached near the old Taxi stand Bhowra P.S. Jorapokhar, District-Dhanbad the Tempo No. JH-10BC-0341 driven by its driver rashly and negligently dashed to Ajeet Kumar causing grievous injury who succumbed to injuries in the Hospital. In this accident there is no fault of deceased Ajeet Kumar rather it was caused on account of the rash and negligent driving of the driver of the Tempo.

In cross-examination this witness says he was familiar with deceased. The occurrence was seen by him from his own eye. Police also interrogated him. The deceased was Advocate by profession.

15.3 From the perusal of the certified copy of the F.I.R. which is Ext.1, it is found that the date of occurrence is shown 18.08.2018. Time is shown 14 hours and the information was given with the Police Station concerned on 07.09.2018 at 11:30. The informant is Kapildeo Prasad. This F.I.R. was lodged against the owner and driver of unknown Tempo.

15.4 The informant-Kapildeo Prasad is the father of deceased. Certified copy of charge-sheet is Ext.2 in Jorapokhar (Bhowra O.P.) P.S. Case No. 89 of 2018. **This charge-sheet was filed against the accused Chottan Biswas S/o Sapan Biswas under Section 279/304(A) of I.P.C. The charge-sheeted witness are informant Kapildeo Prasad, Shashi Bhushan Paswsn, Umesh**

Paswan, Umesh Yadav and Shakti Kumar Tiwari, the Investigating Officer.

15.5 The postmortem report of deceased Ajeet Kumar is Ext.3 in which cause of death is shown due to shock and haemorrhage as a result of ante-mortem injury.

15.6 On behalf of Insurance Company, the Insurance Policy No. OG-18-2441-1803-00000935 (Ext.A) and original questionnaire of the claimant (Ext.B) are filed and in oral evidence D.W.1 Rohit Kumar was examined.

16. The learned Counsel for the appellant has raised this plea that the delay in lodging F.I.R. against the unknown persons makes the F.I.R. fake and doubtful. Moreover, there is no compliance of Section 158 (6) and 159 of M.V. Act, 1988. As such if the charge-sheet has been filed by the I.O. in connivance of the owner and the claimants, the same makes the claim petition exclusively fake. In view of the above submitted that when the Appellant-Insurance Company is not liable at all to pay the compensation, the recovery rights cannot be given in this case.

16.1 **Section 158(6) of the M.V. Act** reads as under:

“As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such

report, forward the same to such Claim Tribunal and insurer.”

16.2 **Section 159 of the M.V. Act** reads as under:

***159. Information to be given regarding accident.-**

The police officer shall, during the investigation, prepare an accident information report to facilitate the settlement of claim in such form and manner, within three months and containing such particulars and submit the same to the Claims Tribunal and such other agency as may be prescribed.

17. Prior the Amendment of 2019 in Section 158 (6) and post amendment Section 159 of M.V. Act mandates that the Police Officer shall during investigation prepare an accident information report to facilitate the settlement of claim in such a form and manner within three months containing such particulars and submits the same to the Claim Tribunal and also to the Insurance Company.

17.1 Herein in this case admittedly there is no compliance of Section 158 (6) and 159 of the M.V. Act.

18. Now the Court has to consider **whether the non-compliance of the same makes itself the claim petition fake ?**

18.1 Admittedly the F.I.R. of this case was lodged after 20 days of the accident against the unknown persons and during investigation the two eye-witnesses came forward who were examined as A.W.2 and A.W.3. These two eye-witnesses have categorically stated that the said accident was caused in their presence by the offending Tempo which was driven by its driver rashly and negligently.

18.2 So far as the delay in lodging the F.I.R. is concerned, the same cannot be said to be fatal. It may not give some rise to the doubt in regard to the veracity of the accident.

18.3 The Hon'ble Apex Court held in **Surendra Kumar Bhilawe vrs. New India Assurance Com. Ltd. (2020) 18 SCC 224:**

50. The FIR was lodged within three days of the accident. In the case of a major accident of the kind as in this case, where the said truck had turned turtle and fallen into a river, slight delay if any, on the part of the traumatised driver to lodge an FIR, cannot defeat the legitimate claim of the insured. Of course in our view, there was no delay at all in lodging the FIR. In case of a serious accident in course of inter-State transportation of goods, delay of 20 days in lodging a claim is also no delay at all. It is nobody's case that the claim application filed by the appellant was time-barred. Moreover, the insurer had, in any case, duly sent its Surveyors/Assessors to assess the loss. The claim of the appellant could not have, in this case, been resisted, either on the ground of delay in lodging the FIR, or on the ground of delay in lodging an accident information report, or on the ground of delay in making a claim.

18.4 The Hon'ble Apex Court in **Safiq Ahmed vrs. ICICI Lombard General Insurance Company Ltd. (2021) 11 SCC 813** and in **Gohar Mohammed vrs. Uttar Pradesh State Road Transport Corporation & Ors. (2023) 4 SCC 381** has laid down the several guidelines pertaining to **Section 158(6) and 159** of the **M.V. Act** wherein the duty has been casted upon the Police Officer of the Police Station concerned to apprise to the accidental report along with relevant documents to the Tribunal and the Insurance Company as well.

18.5 **In this case the F.I.R. which was lodged against the unknown persons so the information of the I.O. could not be given to the Tribunal or the Insurance Company as well. During**

investigation when the I.O. interrogated two eye-witnesses and on the basis of the documentary evidence and ocular evidence he filed the charge-sheet against the driver of the vehicle though information of the same was not given to the Insurance Company or the Tribunal in regard to the charge-sheet filed by the I.O.

18.6 It is also the settled law that in case of motor accident claim petition the strict Rule of Evidence Act, C.P.C. or Criminal Procedure Code are not applicable and the very touchstone of proving the case beyond reasonable doubt of the criminal cases is also not applicable in cases of proving motor accident claim petition wherein the touch stone is the preponderance of probabilities.

18.7 The Hon'ble Apex Court held in ***Parmeshwari urs. Amir Chand (2011) 11 SCC 635:***

The strict principals of proof in criminal cases are not attracted in Motor Accident Claim Petition. The preponderance of probabilities is applicable.

13. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. **The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted.** The following observations of this Court in *Bimla Devi v. Himachal RTC* are very pertinent: (SCC p. 534, para 15)

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

18.8 The Hon'ble Apex Court held in ***National Insurance Company vrs. Chamundshwari 2021 Live Law SC 529:***

In motor accident claim cases evidence recorded by the Tribunal is to be given weight over the contents of the F.I.R. in case of contradiction.

8..... In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report.

18.9 The Hon'ble Apex Court held in ***Rajwati @ Rajjo versus United India Insurance Company Ltd. 2022 LiveLaw (SC) 1016:***

The strict Rules of evidence Act as applicable in criminal cases are not applicable in Motor Accident compensation cases

19. It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. **As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases**, i.e., to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases".

19 The Insurance Company was made liable to pay as the said vehicle was plied without the permit, on this very ground the recovery right which has been given to the Insurance Company by the learned Tribunal.

19.1 The Hon'ble Apex Court held in ***Amrit Paul Singh vrs. TATA AIG General Insurance Company Limited (2018) 7 SCC 558:***

The insurer cannot be absolved from the liability on the ground of route permit and consequently recovery right may be given to the Insurance Company for the said breach of conditions of insurance policy.

24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the

vehicle had temporary permit or any other kind of permit. **The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability.**Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in *Swaran Singh* and other cases pertaining to pay and recover principle.

20 The claim petition cannot be said to be fake reason being in this case the owner of the Tempo was also impleaded as party and the owner of the Tempo was very much aware that he had no route permit of the Tempo and the liability would ultimately be fixed upon the owner. Had there been any connivance of the owner of the driver with the claimants he would not at all have permitted the claimants to falsely implicate his Tempo in the alleged accident.

20.1 In this case the learned Tribunal has held that the driver of the offending vehicle was also having the valid and effective driving licence and the insurance was also valid and effective on the date of accident; but the very offending Tempo was plied without permit. As such the ultimate liability would be of the owner and the Insurance Company has been directed to pay the compensation amount with the liberty to recover the same from the owner. **The same can be done by the learned Tribunal because there was no fundamental breach of the terms and conditions of the insurance policy.**

20.2 ***The learned Counsel for the appellant has relied upon the Judgment of Balu Krishna Chavan vrs. The Reliance***

General Insurance Company Ltd. & Ors. 2022 LiveLaw (SC) 932 the benefit of this Judgment of Hon'ble Apex Court cannot be given to the appellant reason being the Hon'ble Apex Court in the Judgment of Balu Krishna Chavan (supra) has held that if the Insurance Company is not at all liable to pay the amount of compensation then no direction to pay and recover can be made. In this very case the deceased was gratuitous passenger in the said vehicle in view of para 7 of the Judgment. In that case no liability can be fastened to the Insurance Company. The present case is distinguished from the Judgment of Hon'ble Apex Court Balu Krishna Chavan (supra) on the ground that in the case in hand the offending vehicle was insured by the appellant and the insurance was valid and effective on the date of accident. The driver of the offending vehicle who has driven the Tempo rashly and negligently causing death of husband of claimant No.1 admittedly was also having the valid and effective driving licence.

The learned Tribunal had directed the appellant-Insurance Company to pay and recover the compensation on the ground that the said offending Tempo was driven without permit. Breach of the insurance policy which is one of the breach of condition of the policy but cannot be accepted as a fundamental breach of insurance policy. In view of the above, the direction of pay and recover the compensation amount is

justified to meet the ends of justice by the learned Tribunal under the facts and circumstances as narrated hereinabove. `

21. Therefore, taking into consideration the eye-witness account and the F.I.R., charge-sheet and the postmortem report the factum of accident is very much proved. There cannot be any doubt in regard to the fake claim as alleged by the learned Counsel for the appellant.

22. In view of the above I am of the considered view that the claim petition cannot be said fake as submitted by learned Counsel for the appellant. **Accordingly, aforesaid point of determination is being decided against the appellant and in favour of the respondent.**

23. In view of critical analysis of the evidence on record as stated hereinabove, this Misc. Appeal deserves to be dismissed.

24. This Misc. Appeal is hereby dismissed. The impugned Award is confirmed.

25. The statutory amount of Rs. 25,000/- if paid shall be adjusted in the amount of the compensation to be paid and recover.

(Subhash Chand, J.)

P.K.S./A.F.R.