

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**M.A. No. 305 of 2014**

The Branch Manager, the Oriental Insurance Co. Ltd. .... Appellant

**Versus**

1. Sita Chowdhury
2. Aakansha Chowdhury
3. Aditya Jana
4. Branch Manager, National Insurance Co. Ltd.
5. Smt. Bulba Bagchi
6. Smt. Dalia Baagchi

.... .... **Respondents**

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**CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY**  
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For the Appellant : Mr. G.C. Jha, Advocate  
For the respondent no.1 : Mr. J.N Upadhyay, Advocate  
For the respondent No.5 : Mr. A.K. Lall, Advocate

**C.A.V. ON 11.02.2022**

**PRONOUNCED ON 17 / 02 / 2022**

1. Oriental Insurance Company, insurer of Alto car has preferred the instant appeal against the award of compensation passed in Compensation Case No. 70 of 2010 wherein compensation of Rs. 4,51,000/- has been awarded under Section 166 of the MV Act in favour of the claimants for the death of Shankar Chowdhury in a motor vehicle accident when the Alto Car on which he was travelling bearing registration no. JH-06A- 6902 met with accident with a stationary truck bearing registration no. WB-33- 2468. The Tribunal recorded a finding of contributory negligence and awarded compensation against the insurer of both the vehicles in the ratio of 50% each.

2. The car was being driven by one Jayanta Bagchi at the time of accident who also sustained fatal injuries in the accident for which Compensation Case No.28/2010 was filed and has been disposed separately. The heirs of Jayanta Bachi have preferred a separate appeal being MA 138/13. Both these appeal have been heard together but will be disposed of by separate Judgment since they arise of Judgment and award in two separate cases.

3. The instant appeal has been preferred mainly on the following grounds:

I. As per the FIR, charge-sheet, claim application and the evidence of AW1, the accident took place due to fault on the part of the driver of the truck which was parked on the road without putting the tail

light or blinkers on, but the Tribunal has returned a finding on Issue No.III of composite negligence holding the driver of both the vehicles equally liable for the accident was not tenable on fact.

II. The Insurance Company had specifically pleaded in their written statement that no premium had been paid by the insured for the passengers of the car. The policy obtained by the Insured Jayanta Bagchi was for “private car liability only policy Zone, which is an “Act policy”. Premium for third party liability as per act was Rs.670,’ premium for owner’s/driver’s personal accident Rs.100 and premium of legal liability for driver was Rs 25 had been paid. On bare reading of the insurance policy (Exhibit 8) of the Alto car shall reveal that the schedule of premium contains two columns: (1) A own damages B liability. Premium for column B – liability has been paid and Column A – own damage is completely blank. Which means that no premium for own damage has been paid. The “comprehensive policy” means coverage for own damage (column A) legal liability (column B). In the instant case, policy has been issued for Act only by taking premium for Third Party cover, owner/driver and paid driver. The Learned Tribunal had wrongly held the said policy as comprehensive policy and awarded against the appellant.

III. In the absence of premium received for the passengers/occupants of the car, the status of the deceased was that of a gratuitous passenger and as per the judgment of Hon’ble Apex court reported in 2006 capital ACJ 1441, the Insurance Company is not liable to pay compensation.

4. The factum of accident is not in dispute. Maruti Alto Car bearing registration No.JH-06A-6902 crashed in the cold and foggy winter into the truck bearing registration No.WB-33-2468, regarding which Belda P.S. Case No.158/2009 was registered under Sections 279, 283, 304A/427/338 of the IPC against the driver of both the vehicles. In this accident three passengers including the driver of the Maturi Alto Car received fatal injuries and died on the spot. The dead persons were identified as (1) Jayanta Bagchi, S/o Tapan Bagchi (2) Subhash Choudhary S/o Tarnikant Choudhary (3) Shankar Chowdhury, S/o Tarnikant Choudhary (all dependants of Shankar Chowdhury) filed Compensation Case No.70/2010 under Section 166 of M.V. Act.

5. In the instant appeal mainly two questions need to be answered. Firstly, whether the finding of fact on composite negligence on part of both the vehicles is sustainable in the light of the evidence on record?

Secondly, whether the Insurance policy covered the passengers of the Alto car?

6. As per the claimant's case there was awful fog at the relevant time of accident and therefore the driver of the Maruti car could not see the stationary truck parked there. P.W.-3 Mukund Bera who has claimed himself to be the eye witness to the accident, has deposed that it was a foggy morning and a truck was parked on the road, there was no light or blinkers on, and the car crashed into the truck. In para 3 of the cross-examination he has deposed that it was a single road, but two vehicle could pass on it. In para 7 he has further deposed that nothing was visible due to fog. FIR (Ext 2) in this case was lodged against the drivers of both the vehicles and the charge-sheet has been filed against the driver of the truck Tapan Sarkar. Jayanta Bagchi has not been charge-sheeted since he died in the accident.

8. Rashness and negligence in driving is a subjective determination depending on different factors like road condition, volume of traffic, habitation in the area and weather condition. Here in the instant case it has come in evidence that there was thick fog at the time of accident and it was a single road where the accident took place. It has also come in evidence that truck had not kept its blinkers on at the time of accident which certainly indicates negligence on the part of the driver of the truck. It has also come in evidence the truck was parked on the road and not on the flanks at that time resultantly due to thick fog the driver of the Alto Car could not see the truck and crashed into it. The proximate cause of the accident was the wrong manner of parking on the road. In the absence of any contrary evidence led on behalf of Insurance Company regarding the speed of the Alto car or negligence on the part of the driver of the vehicle, finding by the Tribunal of composite negligence on the part of the driver of the Alto car is perverse and unsupported by evidence. The accident was the result of flagrant negligence on the part of the truck driver to have parked the truck on the road without following any of the traffic rules to avoid such a tragic accident which claimed three lives in it. In a somewhat similar case *Archit Saini v. Oriental Insurance Co. Ltd.*,

(2018) 3 SCC 365 where the driver of the Maruti car could not spot the parked Gas Tanker due to the flashlights of the oncoming traffic from the front side and the Gas Tanker being parked in the middle of the road without any indicator or parking lights and the Maruti car could not see the parked truck due to flash light of the vehicles coming from the opposite direction, the Hon'ble Supreme Court set aside the order of the Tribunal that it was a case of contributory negligence and affirmed the order of Tribunal that negligence was on the part of the driver of the Gas Tanker on the evidence on record.

The finding of composite negligence is accordingly set aside.

9. In view of the above finding the question whether the insurance policy of the Alto Car covered the occupants or not, loses significance, as it is the insurer of the truck i.e. National Insurance Company that is solely responsible for the accident.

10. On the quantum of accident, Rs.4,60,800/- has been awarded by accepting the income of the deceased to Rs.3600/- per month and age of the deceased to be 35 years. Apart from this Rs.40,000/- has been awarded under conventional head. From this it is manifest that compensation has not been awarded under the head of the future prospect and award under the head of conventional has also not been as per the ratio decided in **National Insurance Company Ltd Vs Pranay Sethi {(2017) 16 SCC 680}**.

11. The claimants shall, therefore, be entitled to compensation under the head of future prospect. The final compensation shall therefore work out as under

Compensation under future prospect = Rs.4,60,800 x 40%= Rs. 1,84,320/-

Compensation under conventional head = Rs.77,000/-

Total Compensation Rs.4,60,800 + Rs.1,84,320+Rs.77000 = Rs.7,22,120/-.

Under the circumstance the claimants are entitled to compensation of **Rs.7,22,120/-** with interest at the rate of 7.5% from the date of application from O.P. No.2 National Insurance Company Ltd.

Judgment and award passed against the appellant Oriental Insurance Company is set aside. Appeal is allowed with modification of award.

National Insurance Company (O.P. No.2) is directed to pay the compensation amount to the Tribunal within a month of this order. The Tribunal to pay the compensation amount to the claimants after proper identification in the following manner:

- A. 70% of the total compensation to be paid to claimant no.1
- B. 30% of the total compensation to be paid to claimant no.2 jointly with claimant no.1
- C. The amount paid to the claimant no.2 to be fixed deposited jointly in the name of claimant nos. 1 and 2 till claimant no.2 attains 21 years of age.

The appeal is allowed with the above modification of the award. Appellant Insurance Company is permitted to withdraw the statutory amount deposited at the time of filing of this appeal.

Consequently, I.A. No. 5260 of 2021 stands disposed of.

**(Gautam Kumar Choudhary, J.)**

Jharkhand High Court, Ranchi  
Dated the 17<sup>th</sup> February, 2022

AFR / AKT