

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**(Civil Miscellaneous Appellate Jurisdiction)**  
**M. A. No. 342 of 2019**

.....  
National Insurance Company Ltd. ..... Appellant  
**Versus**  
Asik Khan & Others ..... Respondents

**CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO**  
**(Through : Video Conferencing)**

.....  
For the Appellant : Mr. Amaresh Kumar, Advocate  
For the Respondent Nos.1 to 5 : Mr. Birendra Kumar, Advocate  
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**07/08.07.2020**

Heard, learned counsel for the appellant, Mr. Amaresh Kumar and learned counsel for the respondent nos.1 to 5, Mr. Birendra Kumar.

Pursuant to the order passed by this Court, the Officer In-charge, Namkum, Ranchi has returned unserved notice upon respondent no.6, Bijendra Kumar Yadav with report that R-6 a tenant in the house and left that house five years ago.

This Court asked Mr. Amaresh Kumar as to whether he has any issue against the owner of the offending vehicle.

Learned counsel for the appellant has submitted that owner has not appeared before the learned Tribunal, as such, the Issue No.5 with regard to violation of terms and conditions of Insurance Policy has been adjudicated, holding that insurer of the alleged offending vehicle has failed to prove the fact about violation of terms and conditions of the Insurance Policy by the owner of the insured offending vehicle i.e. Tata Indigo Car bearing registration No. JH-01BK-7649. As such, this Court is not inclined to give any right to recovery in favour of the Insurance Company from the owner of the offending vehicle. However, since it is an ex-parte order against the owner of the offending vehicle, the insurer company, if so advised, may prefer an application before the learned Tribunal against the owner of the offending vehicle to establish its case in absence of the claimants, as the claimants have nothing to do between the Insurance Company and the owner.

Accordingly, the said point is hereby negated. However, such liberty is always with Insurance Company to pursue its matter before the competent court of law.

So far the quantum of compensation is concerned, learned counsel for the appellant has submitted that claimants have claimed that the deceased was

working as a supervisor in IVF & Research Centre, Morabadi, Ranchi having monthly income of Rs.7,000/- per month and at the time of his death, he was aged about 23 years, but in the post-mortem report i.e. Exhibit-3, the Doctor has assessed age to be 32 years. The learned Tribunal has committed error considering the deceased to be working as a labourer having monthly income of Rs. 6,000/- (Rs.200 per day x 30 days) and annual income of Rs. 72,000/-. Further there was no document of self-employment and the learned Tribunal has considered the deceased to be labourer and no cross objection has been filed by the claimants, but instead of that, learned Tribunal has granted 40% of income of the deceased as future prospect wrongly considering the judgment of *National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* reported in (2017) 16 SCC 680 (Paragraph-59.4) and also the interest has been wrongly awarded @ 9% per annum from the date of admission of the claim application under Section 166 of the Motor Vehicle Act i.e. 30.06.2016 till the date of realization.

Learned counsel for the respondent nos.1 to 5, Mr. Birendra Kumar has submitted that he requires some time so as to assist this Court, on the point of considering a labourer to be self-employed in absence of any cross objection filed by them.

On the request of learned counsel for the respondent nos.1 to 5, Mr. Birendra Kumar, put up this case tomorrow i.e. on 09.07.2020.

Learned counsel for the appellant has no objection.

Considering the same, let the case be listed tomorrow i.e. on 09.07.2020 under the heading "For Admission".

**(Kailash Prasad Deo, J.)**