

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 356 of 2016

1. Alimuddin Ansari, son of Late Akbar Hussain,
2. Md. Almin Ansari, son of Alimuddin Ansari
3. Azamtullah Ansari, son of Alimuddin Ansari,
4. Khusbu Rani, daughter of Alimuddin Ansari
5. Gulabasa Rani, D/o Alimuddin Ansari (minor aged about 16 years)
6. Asif Ali, son of Sri Alimuddin Ansari (minor aged about 10 years)

(Appellant Nos. 5 and 6 being minors are represented through their father and natural guardian the Appellant no. 1), Above all resident of Katamkuli, P.O. – Katamkulu, P.S. Pithoria, District - Ranchi

... ... **Appellants**

Versus

1. Mr. Om Prakash Kumar, son of Dhaneshwar Mahto, resident of Katamkuli, P.O. – Katamkulu, P.S. – Pithoria, District – Ranchi
2. Bajaj Allianz General Insurance Co. Ltd. at 5th Floor Mahabir Tower, Main Road, P.O. – G.P.O., Ranchi, P.S. Kotwali, District Ranchi.

... ... **Respondents**

For the Appellants	: Mr. Ravi Ranjan, Advocate
	: Mr. Kaushalendra Prasad, Advocate
For the Res. No. 1	: Mr. Vivek Kumar Sharma, Advocate
For the Res. No. 2	: Mr. Alok Lal, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ARUN KUMAR RAI
JUDGMENT

C.A.V. on 29.04.2025

Pronounced on 31.07.2025

1. Heard Mr. Ravi Ranjan, learned counsel appearing on behalf of the appellants/claimants and Mr. Vivek Kumar Sharma, learned counsel appearing on behalf of the respondent no. 1(owner) as well as Mr. Alok Lal, learned counsel appearing on behalf of the respondent no. 2- Bajaj Allianz General Insurance Co. Ltd.
2. The instant miscellaneous appeal is preferred against the judgment and award dated 21.04.2016 passed by learned Presiding Officer-cum-Motor Vehicle Accident Claims Tribunal,

Ranchi in Compensation Case No. 216 of 2011 whereby and whereunder, the Tribunal has awarded a sum of Rs. 5,13,000/- with interest thereon at the rate of 9% per annum from the date of filing the case till its realization, in an application filed under Section 163-A of Motor Vehicle Act, 1988 and directed the insurance company to pay the compensation amount within a month to the appellants/claimants from the date of award.

3. The brief facts of the case is that on 08.02.2008 while the deceased-Hazara Khatoon along with her children and relatives were returning to their place from Lohardaga by tempo having Registration No. JH-01-S-0875, which was hit by unknown Bolero Jeep near Chanho petrol pump, as it was being driven in a rash and negligent manner and the above said Hazara Khatoon succumbed to the injuries sustained in the said motor vehicle accident.

Thereafter, husband and children of deceased-Hazara Khatoon filed a claim application under Section 163-A of Motor Vehicle Act, 1988 before the Tribunal stating therein that deceased was selling vegetables and her annual income was Rs. 39,000/- per annum. It is required to be noted that, for the above stated incident, an FIR being Chanho P. S. Case No. 11 of 2008 under Sections 279/304A of IPC has also been got registered.

4. The record of the Tribunal reveals that initially the seven issues were framed vide order dated 11.03.2014 but the Tribunal vide its order dated 02.04.2016 recorded that since the claim application under Section 163-A of Motor Vehicle Act, 1988 has been filed for compensation but the issues framed were not as per Section 163-A of Motor Vehicle Act, 1988 rather, it is as per Section 166 of Motor Vehicle Act, 1988, therefore, the Tribunal recast the issues in the presence

of both the parties. Records further reveal that there was no objection from either of the sides.

5. During enquiry, appellants/claimants has brought on record evidences of three witnesses, they are A.W. – 1, Ajharul Haque, nephew of the deceased, A.W. – 2 Alimuddin Ansari, husband of the deceased (claimant/applicant No. 1) and A.W. 3, Moulana Abdul Hasib who is an eye-witness as a co-passenger in the tempo involved in the accident. The above-said three enquiry witnesses on behalf of appellants/claimants reiterated the case of appellants/claimants A.W. – 2, Allimuddin Ansari has stated in his examination-in-chief that his wife, since deceased, was doing the business of vegetable and used to earn Rs. 200-250/- per day.

The Tribunal considering the income as contended in the claim application considered the annual income of the deceased as Rs. 39,000/- per annum and thereafter, awarded compensation under different heads to the tune of Rs. 5,13,000/- and interest of 9% was also allowed from date of filing of the claim case i.e. from 15.07.2011 till realization of the said amount.

6. Learned counsel for the appellants/claimants confined his argument to the extent that as in the evidence of A.W. – 2, Allimuddin Ansari, it has come on record that deceased was getting Rs. 200-250/- per day from the business of vegetable, therefore, Rs. 75,000/- was to be considered as annual income of the deceased and the matter should be decided under Section 166 of Motor Vehicle Act, 1988 and not under Section 163-A of Motor Vehicle Act, 1988 because the income is definitely more than Rs. 40,000/- and appellants/claimants have also brought on record the negligence on the part of the driver of the vehicle, which caused the accident and resulted in the death of the deceased-Hazara Khatoon.

7. Learned counsel further pointed out that the Tribunal ought to have considered aforesaid aspect and would have awarded compensation under Section 166 of Motor Vehicle Act, 1988.

8. Learned counsel for the appellants/claimants has also relied upon the judgment of the Division Bench of this High Court in the case of ***Sumiya Devi and Others vs. Sri Bir Marketing Services and Others*** reported in **2008 ACJ 2833**.

9. Per contra, learned counsel appearing on behalf of respondent no. 2-Insurance Company-Bajaj Allianz General Insurance Company Limited pointed out that it is the appellants/claimants who have chosen to bring their case under Section 163-A of Motor Vehicle Act, 1988 and appellants/claimants cannot and should not be allowed to blow hot and cold by changing their choice by asking the Tribunal or the Appellate Court to consider its case under Section 166 and not under Section 163 of the Motor Vehicle Act, 1988.

10. After hearing both the sides and perusing the record of tribunal, it transpires that, it is the appellants/claimants who have filed an application under Section 163-A of Motor Vehicle Act, 1988 stating therein the annual income of deceased-Hazara Khatoon Rs. 39,000/-. During enquiry before the Tribunal A.W. - 2, Allimuddin Ansari, husband of the deceased filed an affidavit by way of his examination-in-chief, stating therein that income of the deceased from the vegetable business was Rs. 200-250/- per day. A.W. - 2, Allimuddin Ansari, has nowhere stated in his testimony that deceased was doing the vegetable business/selling vegetables on each and every day of the month, so from this angle also, it is difficult for this Court to consider the submission of the learned counsel for the

appellants/claimants that income of the deceased was Rs. 75,000/- per annum and too when the claim application under Section 163-A of the Motor Vehicle Act, 1988 speaks about the annual income of deceased as Rs. 39,000/- per annum.

11. The case records further reveals that issues in the present matter has been recasted on account of fact that initially it was casted inadvertently, considering the claim application under Section 166 of Motor Vehicle Act, 1988 but later on, when it was realized by the Tribunal that the claim application has been filed under Section 163-A of Motor Vehicle Act, 1988, the same was recasted on 02.04.2016 in the presence of both the parties including appellants/claimants but appellants/claimants had not objected the same. Even no such plea regarding adjudicating the claim application under Section 166 of Motor Vehicle Act, 1988 has ever been made by the appellants/claimants before the Tribunal, rather matter was heard finally on 02.04.2016 itself by the Tribunal and thereafter posted for judgment. In the appellate stage the appellants/claimants cannot be allowed to agitate an issue which has not been agitated before the learned tribunal in view of judgment rendered by the Hon'ble Supreme Court in the case of ***Ramchandra v. United India Insurance Co. Ltd.***, reported in **(2013) 12 SCC 84**, which reads hereunder:-

“26. Thus, this plea was never put to test or gone into by the Motor Accidents Claims Tribunal since the Insurance Company neither took this plea nor adduced any evidence to that effect so as to give a cause to the High Court to accept this plea of the Insurance Company straightforwardly at the appellate stage.”

12. As far as, judgment relied upon by the claimants/appellants is concerned, the facts of the ***Sumiya Devi's case (supra)*** are quite different from those of the present case. The appellants/claimants in the said case has

stated the annual income of the deceased as Rs. 71,280/- as per the income tax assessment of the year 2001-2002 and learned tribunal also recorded a finding that annual income of the deceased was Rs. 72,000/-. Whereas in the present case in pleading annual income of deceased has been shown as Rs. 39,000/-per annum and no piece of paper has been brought on record *qua* income of the deceased to tune of Rs. 75,000/- per annum. Therefore, ratio of **Sumiya Devi's (supra)** is not applicable in the present case.

13. It is apposite to refer herein the judgment rendered by the Hon'ble Apex Court in the case **Deepal Girishbhai Soni v. United India Insurance Co. Ltd.**, reported in **(2004) 5 SCC 385** which arose out of a reference made for a decision on the correctness of the view expressed in **Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala** reported in **(2001) 5 SCC 175** that determination of compensation in a proceeding under Section 163-A of the Motor Vehicle Act is final and further proceedings under section 166 Motor Vehicle Act is barred. A three judge bench in the case of **Deepal Girishbhai Soni (Supra)** has held that it is open for the claimant to agitate for final compensation by resort to the provisions of section 166 or section 163-A of Motor Vehicle Act. Section 163-A Motor Vehicle Act provides for the final award based on structured formula based on the provisions of the second schedule of section 163-A and section 166 of the Motor Vehicle Act being final and independent of each other and a claimant cannot pursue his remedies thereunder simultaneously. Relevant Para of the judgment reads hereunder:-

57. *We, therefore, are of the opinion that the remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.*

In view of aforesaid discussions and legal proposition, this Court is of considered view that claim of appellants/claimants cannot be considered under Section 166 of Motor Vehicle Act, 1988.

14. As far as computation of compensation is concerned, it appears that it is not strictly in consonance with Scheduled – II of Motor Vehicle Act, 1988 rather, the Tribunal has computed the compensation as per the judgment of the Hon'ble Supreme Court in the case of ***Smt. Sarla Verma vs. DTC*** reported in **(2009) 6 SCC 121**.

15. This Court finds that, had the compensation been computed as per schedule, then the awarded amount of compensation would definitely be less than what has been awarded by the Tribunal, but as the appellants/claimants approached this Court in an appeal for enhancement of quantum of compensation by invoking Section 173 of Motor Vehicle Act, 1988. This Court has already held in preceding paragraphs that the application for claim cannot and should not be considered under Section 166 of Motor Vehicle Act, 1988. But at the same time, the quantum of compensation awarded should also not be disturb in view of the judgment of Hon'ble Supreme Court in the case of ***Ranjhana Prakash and others vs. Divisional Manager and Another*** reported in **(2011) 14 SCC 639**, which reads as herein:-

“8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by the owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by the owner/insurer for reducing the compensation, nor can it reduce the

compensation in an appeal by the claimants seeking enhancement of compensation”

16. In view of the aforesaid discussions and legal proposition, this Court does not find any merit in the instant appeal. Hence, the instant miscellaneous appeal is, hereby, dismissed.

17. Respondent No. 2, Bajaj Allianz General Insurance Co. Ltd., is directed to indemnify the awarded amount to the claimants within a period of 45 days from today. In case any part of the awarded amount has already been paid, the respondent shall pay the remaining balance.

18. Let the lower court records be sent back to the concerned tribunal.

(Arun Kumar Rai, J.)

High Court of Jharkhand at Ranchi

Dated, the 31st day of July, 2025

Umesh/-A.F.R.