

**(2001) 02 JH CK 0004**

**Jharkhand High Court**

**Case No:** M.A. No. 175 of 1999 (R)

The New India Assurance  
Company Ltd., Ranchi

APPELLANT

Vs

Sairun Biwi and Others

RESPONDENT

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**Date of Decision:** Feb. 19, 2001

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11
- Motor Vehicles Act, 1988 - Section 166, 168, 173

**Citation:** (2002) 0 ACJ 1476 : (2001) 1 LJ(R)(Jhar) 200 : (2001) 2 ACC 115 : (2001) 49 BLJR 2027 : (2006) 4 JCR 27

**Hon'ble Judges:** Gurusharan Sharma, J

**Bench:** Single Bench

**Advocate:** Alok Lal, for the Appellant; Jaiprakash, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

Gurusharan Sharma, J.

Heard the parties and with their consent this appeal is disposed of under Order XLI, Rule 11 of the Code of Civil Procedure. By impugned judgment and award, dated 5.2.1999, appellant was directed to pay compensation of Rs. 4,07,800 to claimants-respondents 1 to 5 as compensation, under the provisions of Motor Vehicles Act, 1988. Further, direction was given that if the Insurance Company fails to pay the compensation amount within 4 months from the date of impugned order, the claimants would be entitled to get interest 12% per annum on the amount of compensation. In the present appeal, filed by Insurance Company, u/s 173 of the said Act, award impugned has been challenged only to the extent that claimants were not entitled to get more than Rs. 3,59,156/-, which was claimed by them. It is not in dispute that on 13.8.1992, one Juman Mian, who was a passenger on a tracker (BR-17(B)-6369), died, when the said tracker met accident. It was also not in dispute

that accident took place on account of rash and negligent drive of tracker. At the time of his death Juman Mian was 40 years old and was employed as loader in Parasiya Colliery of Eastern Coalfields Limited and was getting Rs. 3,459.14 paise per month as salary and the said vehicle was insured with the appellant-Insurance Company at the relevant time, In his monthly salary of Rs. 3,460/-, a sum of Rs. 1,260/- was deducted towards his personal expenses and annual dependency was calculated at Rs., 26,250/-(2210 x 12). Tribunal, thereafter, applied 15 multiplier and calculated compensation amount at Rs. 3,97,800/- and added Rs. 10,000/- towards future expectation. Thus, total amount came to Rs. 4,07,800/-. The question whether claimants are entitled to get higher amount of compensation than the amount claimed in the claim application was considered in detail in a full Bench decision of Gujrat High Court in [Dr. Urmila J. Sangani Vs. Pragjibhai Mohanlal Luvana and Others,](#), and was held that u/s 166 read with Section 168 of the Motor Vehicles Act, 1988, it was not open to Claims Tribunal to award the amount of compensation, higher than the amount claimed by the claimants in the claim petition, on the ground that tribunal had jurisdiction to award just compensation. In my view, ratio of said Full Bench decision is applicable in the present case. Accordingly, total amount of compensation of Rs. 4,07,800/- is reduced to Rs. 3,59,156/-, as claimed by respondents 1 to 5 in their claim application. The claimants-respondents 1 to 5 are also entitled to get interest @ 12% per annum from the date of filing of claim application till payment. This appeal is disposed of with the aforesaid modification in the impugned judgment and award.

2. Statutory amount of Rs. 25,000/-, deposited by appellant in this appeal, by Challan No. J-103, dated 10.12.1999, is permitted to be withdrawn by claimants-respondents 1 to 5, on proper verification and in accordance with law.

3. Appeal disposed of accordingly.