
(2025) 04 JH CK 1295
In the Jharkhand High Court
Case No : M. A. No. 610 Of 2016

Branch Manager, the New India Insurance Company Ltd	APPELLANT
Vs	
Babita Devi	RESPONDENT

Date of Decision : 02-04-2025

Acts Referred:

Motor Vehicle Act, 1988 — Section 166

Citation : (2025) 04 JH CK 1295

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : G.C. Jha, Sudhir Sahay

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

Heard the parties.

1. Insurance Company is in appeal against the judgment and award of compensation under Section 166 of the Motor Vehicle Act in M.A.C.T. No. 02 of 2012 by which the liability has been fixed on the Insurance Company to pay the compensation amount.
2. It is not disputed that deceased-Raju Das died in a motor vehicle accident on 04.08.2011 when he was travelling in a bus bearing Registration No. JH11D-0222 which was under the insurance cover of the appellant-Insurance Company.
3. The main plea that has been raised at the bar on behalf of the Insurance Company, is regarding the manner in which the accident took place. It is definite case of the Insurance Company that the deceased Raju Das was travelling on the roof top of the bus and he fell down from it resulting in his accidental death, whereas learned Tribunal has recorded a finding that the deceased was travelling inside the bus when he had an accidental fall due to overcrowding in the bus.
4. It is argued by Mr. G.C. Jha, learned counsel appearing on behalf of the

Insurance Company, that as per the F.I.R, which has been adduced into evidence and marked as Ext.1, and is at the instance of Bhadu Das, who happened to be the cousin of the deceased, the deceased was on the roof top of the bus when he fell down resulting in his accidental death. Bhadu Das has been examined as P.W.5, wherein he has given false evidence that the deceased was not on the roof top, rather he was travelling in the bus near the gate. His attention was also drawn in para 23 of the cross examination, wherein he had admitted that his statement was recorded by the police on which he had put his L.T.I. on the basis of which, the case was registered. The other witnesses are not direct eye witness to the incidence and therefore their testimony regarding the manner of accident is not relevant. As the owner of the vehicle had permitted the deceased to have travelled on the roof top, therefore, there was breach of term and condition of the insurance policy, which relieved the Insurance Company to indemnify the owner of the vehicle.

5. It is argued by Mr. Sudhir Sahay, learned counsel appearing on behalf of the owner of the vehicle, that P.W.5 is the eye witness who was travelling in the bus and he has deposed that at the time of accident, the deceased was travelling inside the bus. Therefore, the finding of fact regarding the manner of accident cannot be interfered with.

6. Having heard both sides and on perusal of the evidence on record it is manifest that only eye witness is PW-5, as the other witnesses i.e. PW.1 to PW.4 have admitted in their cross-examination that they had not witnessed the accident.

7. So far as PW-5 is concerned, he is none other than the informant, on whose statement Jamtara PS Case No.170/2011 was registered under Sections 279, 337, 338 and 304A of the IPC. His statement has been proved and marked as Ext-1, wherein he has specifically stated that at the time of accident the deceased was travelling on the roof top. This witness has admitted in his cross-examination that his statement was recorded by the police, on which the case was registered. Thus, deposition of this witness regarding the manner of the accident, is at complete variance and in contradiction to the statement as given in the FIR. Subsequent version that the deceased was inside the bus near the gate is product of afterthought, and therefore cannot be accepted. It will be relevant to take note of the observation of the Apex Court while considering the relevance of FIR in a claim case. It has been held in National Insurance Co. Ltd. v. Rattani and others, (2009) 2 SCC 75 : (2009) 1 SCC (Civ) 398 :

"8. We are not oblivious of the fact that ordinarily an allegation made in the first information report would not be admissible in evidence per se but as the allegation made in the first information report had been made a part of the claim petition, there is no doubt whatsoever that the Tribunal and consequently the appellate courts would be entitled to look into the same. However, in their depositions, the claimants raised a new plea, namely, that the deceased and the other injured persons were travelling in the said truck as representatives of the

owner of the goods.

11. Ordinarily we would not have entered into the realm of appreciation of evidence but as the High Court failed and/or neglected to do so, we have no other option but to undertake the job of the High Court. The first information report which was brought on record, clearly proceeded on the basis that the deceased and the other injured persons were members of the marriage party.

15. As indicated hereinbefore, the first information report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but, when the first information report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose.”

8. Learned Tribunal erred in accepting the deposition regarding the manner of accident, without taking note of the FIR which was proved and was part of the record. The deposition that the deceased was travelling inside the bus cannot be accepted, and it can be safely concluded that he was travelling on the roof top of the bus.

9. The main question that falls for consideration is that can an insurance company avoid a third part liability to pay the compensation on the ground that the deceased was travelling on the roof top?

10. The law in this regard is settled by the judgment of the Division Bench of this Court National Insurance Company Ltd Vs Most. Budhani Kisku and Anr., (2008) 1 JCR 366, wherein it has been held that it amounted to violation of the statutory terms of the insurance policy and, therefore, the Insurance Company had a right of recovery from the owner of the vehicle after paying the compensation amount.

11. In this view of the matter, the impugned award of compensation is modified to the extent that the Insurance Company shall have right of recovery against the owner of vehicle after paying the same to the claimants within a month of this order.

12. Under the circumstance, miscellaneous appeal is allowed. Pending I.A., if any, stands disposed of.

Statutory amount to be paid to the claimants on adjustment of the final compensation amount..