(2025) 03 JH CK 1358

In the Jharkhand High Court

Case No : Misc. Appeal No.84 Of 2016

Branch Manager through its Divisional Manager, United India Insurance Co.Ltd	APPELLANT
Vs	
Chandra Devi	RESPONDENT

Date of Decision : 18-03-2025

Acts Referred:
Motor Vehicle Act, 1988 — Section 166

Citation : (2025) 03 JH CK 1358

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Ajay Kumar Pathak, Saumya Pandey, Sumeet Gadodia, Prakhar Hari

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. Insurance Company is in appeal against the award of compensation under Section 166 of the Motor Vehicle Act in Motor Accident Claim Case No.26/2012 whereby and whereunder the liability has been fixed on the Insurance Company to pay compensation amount.

2. The facts of the case are not much in dispute and the appeal is mainly preferred on the ground that as per the FIR and fardbeyan (Exhibit 1 and 2), the deceased was travelling on the roof top of the offending vehicle.

3. It is argued that the deceased died due to his own negligence as he was travelling on the roof top of the bus and therefore, liability could not have been fastened on the Insurance Company as the insured was being plied in breach of terms of the insurance policy. It is further argued that there is breach of term of insurance policy when the owner permits passenger to travel on the roof top. There is fundamental breach of insurance policy in view of the judgment of full Bench of this Court in the case of Giriraj Prasad Agrawal Versus Parwati Devi & Others, 2025 SCC OnLine Jhar 199.

4. Owner of the vehicle was debarred by the Tribunal from filing written statement and he has not appeared before this Court.

5. FIR is not a substantive piece of evidence, but it cannot be completely ignored when it has been adduced into evidence on behalf of the claimant. From the FIR (Exhibit 1), it is evident that deceased was travelling at the time of accident on the roof of the vehicle. P.W. 2 has himself deposed that his son was travelling on the roof top when the accident took place. This part of his deposition remains undemolished in the cross-examination. There is no contrary evidence to hold otherwise. It can be reasonably inferred that at the time of accident, deceased was travelling on the roof of the bus.

6. In view of the ratio laid down by this Court in Giriraj Prasad Agrawal (supra) and by the Division Bench of this Court in National Insurance Company Ltd Vs Most. Budhani Kisku and Anr., (2008) 1 JCR 366, where the owner permits passengers to travel on the roof top of the vehicle, there is a fundamental breach of insurance policy and the Insurance Company shall not be liable to pay the compensation amount.

7. Impugned award of compensation is modified to the extent that the Insurance Company shall have right of recovery against the owner of vehicle.

8. Under the circumstance, miscellaneous appeal is allowed. Interlocutory Application, if any, is disposed of. Statutory amount be remitted to tribunal to be returned to the Insurance Company.

