(2025) 03 JH CK 1361

In the Jharkhand High Court

Case No : Misc. Appeal No.407 Of 2015

Divisional Manage, National Insurance Co. Ltd — APPELLANT

Vs

Nirmala Devi — RESPONDENT

Date of Decision : 18-03-2025

Acts Referred:
Motor Vehicle Act, 1988 — Section 166

Citation : (2025) 03 JH CK 1361

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Alok Lal, Umesh Kumar Choubey

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. Insurance Company is in appeal against the judgment and award of compensation under Section 166 of the Motor Vehicle Act in T.M.V. No.65 of 2010 whereby and whereunder the liability to pay the compensation for the death of Hare Ram Verma under the motor vehicle accident, has been fixed on the appellant-Company.

2. It is argued by the learned counsel on behalf of the Insurance Company that it is consistent case of the claimant that the deceased was travelling on roof top of the vehicle and was collecting fare from the passengers acting as Khalasi-cum-Cleaner. It has also come in the deposition of the witnesses examined on behalf of the claimant. Permitting the deceased to travel on the roof top was a fundamental breach of the policy of the Insurance for which the Insurance Company was entitled to right of recovery in view of ratio laid down by the by the Division Bench of this Court in National Insurance Company Ltd Vs Most. Budhani Kisku and Anr., (2007) 4 JLJR 292. It is further argued that it was not only case of statutory breach, but was also a case of contributory negligence on the part of the deceased.

3. Notices were duly served on the owner of the vehicle (respondent no.6), but no one appeared on his behalf and consequently, appeal is being heard ex-parte so far owner of the vehicle is concerned.

4. Learned counsel on behalf of the claimant has defended the impugned judgment and award.

5. In para 10 of the claim application, manner of accident has been narrated, wherein it has been stated that the deceased was serving as Khalasi-cum-Cleaner of the offending vehicle bearing registration no.JH 09M 1719 in which he met with an accident, and sustained fatal injury. Owner of the vehicle appeared before the Tribunal and filed his written statement, wherein it has been specifically pleaded in para 7 that at the time of the accident, the deceased had fallen from the roof top of the vehicle. Earlier deceased was serving as driver of the offending vehicle, one week before the accident, deceased had engaged Sanjay Sharma as Assistant Driver who caused the accident. At the time of accident he was travelling on the roof of the vehicle. P.W. 2 examined on behalf of the claimant has specifically stated in para 4 that the deceased fell down from the vehicle, resulting in the accident. He has further denied that the deceased was on the roof top at the time of the accident. D.W. 1 has deposed in para 5 that at the time of accident deceased was travelling on the roof top.

6. In view of the fact the deceased was travelling on the roof top, I find merit in the plea of the appellant- Insurance Company, that there was a fundamental breach of insurance policy.

7. Under the circumstance the Insurance Company is entitled to right of recovery.

8. Miscellaneous appeal is accordingly allowed. Interlocutory Application, if any, is disposed of. Statutory amount be refunded to the Insurance Company.