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**(2025) 01 JH CK 1788**

**In the Jharkhand High Court**

**Case No :** Miscellaneous Appeal Nos. 306, 307, 311 Of 2008

Oriental Insurance Co. Ltd

APPELLANT

Vs

Lalu Kalindi

RESPONDENT

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**Date of Decision :** 29-01-2025

**Acts Referred:**

Motor Vehicle Act, 1988 — Section 166

**Citation :** (2025) 01 JH CK 1788

**Hon'ble Judges :** Gautam Kumar Choudhary, J

**Bench :** Single Bench

**Advocate :** Alok Lal, Atanu Banerjee

**Final Decision :** Allowed

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## **Judgement**

Gautam Kumar Choudhary, J

1. From the order dated 22.03.2011 passed in M.A. No.311 of 2008, it appears that substituted service of notice by paper publication was effected, but till date no one has appeared on behalf of the owner of vehicle.

2. All these appeals arise out of award of compensation under Section

166 of the Motor Vehicle Act in favour of the claimants of the deceased persons who were travelling on a bus no.JH 05J 5260, which met with an accident due to rash and negligent driving of its driver.

3. As per the case of the claimants, the driver of the bus was driving the vehicle in a rash and negligent manner as a result, it overturned in which altogether three passengers died in the accident. Separate claims were made by the dependents of the deceased and compensation was awarded under Section 166 of the Motor Vehicle Act making insurer of the bus liable to pay compensation amount.

4. All these three appeals have been preferred against the awarded of compensation in Compensation Case Nos.30 of 2005, 31 of 2005 and 32 of 2005.

5. Since the common question of law has been raised therefore, they are heard together and will be disposed of by the common order.

6. Main plea of the Insurance Company is that the deceased were travelling on the roof top of the bus and therefore there was a breach of term of the insurance and so the Insurance Company was not liable to indemnify the owner of the vehicle.

7. It is submitted by learned counsel on behalf of Insurance Company that P.W. 1 and P.W. 2 have deposed in Compensation Case No.31 of 2005 that the deceased was sitting on the roof top of the bus when the accident took place. P.W. 2 has further stated that he was travelling in the same vehicle at the time of accident. In Compensation Case No.32 of 2005, P.W. 1 has stated that her husband was sitting as a member of band party on the roof top of the vehicle and died in the accident when the vehicle overturned. It is argued that in view of evidence led on behalf of the claimants that the deceased persons were travelling on the roof top of the bus, there was a fundamental breach in the term and condition of the insurance policy. Reliance is placed on Branch Manager, National Insurance Company Limited Versus Giriraj Prasad Agrawal & Others (Civil Appeal No.2421 of 2008) wherein it has been held that on similar facts that appellant-Insurance Company was entitled to recover awarded amount from the owner of vehicle.

8. From the evidence of the claimants as discussed above, it appears that the accident took place when the deceased persons were travelling on the roof top of the vehicle.

9. In view of the ratio laid down by the Apex 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.

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

11. Under the circumstance, all these three miscellaneous appeals are allowed accordingly. Interlocutory Application, if any, is disposed of. Statutory amount be remitted to tribunal to be returned to the Insurance Company.