

## Oriental Insurance Co. Ltd Vs Lalu Kalindi

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 29, 2025

**Acts Referred:** Motor Vehicle Act, 1988 â€” Section 166

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

**Bench:** Single Bench

**Advocate:** Alok Lal, Atanu Banerjee

**Final Decision:** Allowed

### 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 An.r, (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.