

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**M.A. No. 223 of 2009**

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The New India Assurance Company Ltd., Branch Office Bhagalpur

....      ....      ....      **Appellant**

Versus

1. Rajaram Hembrom
2. Sheo Hembrom
3. Smt. Paku Soren
4. Bineshwar Gope
5. Subodh Kumar Yadav

....      ....      ....      **Respondents**

**CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY**

For the Appellant : Mr. G.C. Jha, Advocate

For the Respondents :

**CAV ON : 02.03.2022**

**PRONOUNCED ON 28 . 04 . 2022**

1. Insurance Company has preferred the instant appeal against the judgment and award of compensation under Section 166 of the M.V. Act made in Title Claim Case No.55 of 2005 / 37 of 2007 whereby and whereunder the liability to pay the compensation has been saddled on it.

2. The appeal has been preferred on the ground that it was the specific case of the appellant-Insurance Company before the Court below that the deceased was travelling on the roof of Sawari vehicle Jeep bearing registration no.JH-17A-2093 and the said vehicle was overloaded with passengers. Consequently, the deceased fell down from the roof top of the vehicle and died in consequence to it. The pleading of the Insurance Company is supported by the contents of F.I.R. of Pathargama P.S. Case No.101 of 2005 (Exhibit 3). Overloading of passengers and permitting the deceased to travel on the roof top, was a breach of terms and conditions of the insurance policy and therefore, the Insurance Company was exempted from any liability under Section 149 Sub-section 2 of the M.V. Act.

3. As per the case of the claimants, accident took place on 02.08.2005 when deceased Debi Hembrom was going to join his duty by the offending vehicle bearing registration no.JH-17A-2093. It is contended that the deceased was travelling inside the vehicle.

4. The owner, driver and insurer of the offending vehicle have been impleaded in the case.

5. It is admitted position that the offending vehicle was under the insurance cover of opposite party no.1-New India Assurance Company Ltd.

The claim case has been contested by the claimants inter alia on the ground that there was breach of terms and conditions of the insurance policy because passengers were permitted to travel on the roof top.

6. The learned Tribunal has recorded a finding that accident took place due to rash and negligent driving by the driver of the offending vehicle.

7. With regard to the contention of the appellant that the deceased was travelling on the roof top of the vehicle and died due to the accidental fall, has not been supported by the evidence. A.W. 1-Sonalal Kisku has deposed in para 2 of his examination-in-chief that he fell down from the front seat of the vehicle. In his cross-examination, he has deposed that he was not in that vehicle but he was in another vehicle which was about 15-20 yards behind the offending vehicle and he himself saw Debi Hembrom falling from the vehicle. A.W. 2 and A.W. 3 are not the eye witness to the accident. Investigator on behalf of Insurance Company has been examined as O.P.W. No.1. He has deposed that he collected information during investigation regarding the accident that the deceased was travelling on the roof top. This witness is not an eye witness and therefore his testimony cannot be attached any importance. The F.I.R. (Exhibit 3) has been adduced into evidence which has been registered on the basis of the statement of Jitan Manjhi wherein it has been stated that one person was travelling on the roof, who fell down from the vehicle and died in the accident. The F.I.R. is not substantive piece of evidence and the maker of it has not been examined to accept it and discard the eyewitness account of A.W.1. Therefore, the direct eye witness A.W.1, cannot be brushed aside who has deposed that the deceased at the relevant time of the accident was inside the vehicle. Nothing significant could be elicited in the cross-examination to disbelieve his account.

8. Under the circumstance, I do not find any infirmity in the impugned judgment.

The appeal is accordingly dismissed. The Insurance Company is permitted to withdraw statutory amount.

**(Gautam Kumar Choudhary, J.)**

Jharkhand High Court, Ranchi  
Dated the 28<sup>th</sup> April, 2022

AFR / AKT