

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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M.A.C.M.A. No.1216 of 2005

JUDGMENT:

This appeal is preferred by the Insurance Company against the award passed by the III Additional District Judge-cum-Motor Accidents Claims Tribunal, Visakhapatnam (for short, the Tribunal') in M.O.P. No.163/2002 dated 02.02.2005.

Respondents 1 to 3 herein filed the above O.P. claiming compensation of Rs.2.00 lakh on account of the death of one Smt. Kamireddi Krishnaveni in a motor vehicle accident that occurred on 04.08.2001 in Rachapalli Village, Makavarapalem Mandal, Visakhapatnam District. The Tribunal after considering the oral and documentary evidence on record granted compensation of Rs.2,15,000/- with subsequent interest @ 9% per annum, by award dated 02.02.2005.

Learned counsel for the appellant submitted that the Tractor and Trailor were involved in the accident, though the Trailor was insured, the Tractor was not insured and the Tribunal held that the second respondent, who is the appellant herein, is not liable to pay compensation and the first respondent before it alone was liable to pay compensation, but the petitioners were entitled to recover the compensation from the respondents 1 and 2 jointly and severally, in which event the second respondent can recover the same from the first respondent by invoking the provisions of Section 174 of the Motor Vehicles Act, no direction was given protecting the interest of the appellant.

Learned counsel for the appellant fairly submitted that the first point is covered by a decision of the Division Bench of this Court in **United India Insurance Company Limited, Kadapa District v. Koduru Bhagyamma**, and in view of the same the objection of non-availability of insurance for the Tractor does not survive for consideration. However, with regard to the protection that has to be given to the appellant in the event of the petitioners before the Tribunal recovering the amount from the appellant, in view of the decision of the

Supreme Court in **Oriental Insurance Company Limited v. Shri Nanjappan**, it is made clear that the appellant shall not be required to file a separate suit for recovery of amount from the first respondent-owner, but it can initiate proceedings before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue was decided against the owner and in favour of the insurer. However, before release of the amount to the claimant, the owner of vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimant. The offending vehicle shall be attached as a part of the security. The Executing Court was also given liberty to take assistance of the concerned Regional Transport authority and shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer.

In view of the above, the award passed by the Tribunal is confirmed, subject to the above observations of the Supreme Court in **Nanjappan's** case (supra).

Accordingly, the Appeal is disposed of. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this appeal shall stand closed.

A.RAMALINGESWARA RAO, J

04.11.2015

MVA

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