

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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M.A.C.M.A.No.1737 of 2005

JUDGMENT:

The second respondent in O.P.No.273 of 2002 on the file of the Motor Accident Claims Tribunal at Nalgonda is the appellant herein.

The O.P was filed by the first respondent herein claiming compensation of Rs.75,000/- for the injuries sustained by him in a motor accident that occurred on 04.10.2001. He was a businessman earning Rs.5,000/- per month. But, due to the accident he became permanently disabled. The owner of the vehicle remained *ex parte* before the Tribunal. The second respondent therein was permitted to raise all the contentions that are available to the owner as per Section 170 of the Motor Vehicles Act in I.A.No.979 of 2004, dated 02.09.2004.

The Tribunal, on evidence, held that the claimant was travelling as a non fare paid passenger and the insurance company was not liable to indemnify the owner, but however, directed the insurance company to deposit the compensation amount and recover it from the owner. Challenging the latter portion of the said order without challenging the quantum of compensation, the present appeal is filed.

When the Tribunal recorded a finding that the insurance company was not liable to indemnify the owner, it ought not to have directed the insurance company to deposit the compensation and recover it from the owner by filing E.P.

In **Manager, National Insurance Company Limited v. Saju P.Paul**, the Supreme Court held that the principle of pay and recover cannot be made applicable in respect of gratuitous passengers.

In view of the above, the direction given by the Tribunal in the impugned award dated 15.04.2005 in O.P.No.273 of 2002, to the extent of directing the appellant to pay the amount and recover from the second respondent herein, is set aside without disturbing the quantum of compensation awarded to the claimant in O.P.No.273 of 2002.

The appeal is, accordingly, allowed. In view of allowing the appeal, the appellant is permitted to withdraw the amount deposited before the Tribunal. The miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

24.11.2015

vs

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