

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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M.A.C.M.A.No.2072 of 2005

JUDGMENT:

This appeal is filed by the insurance company challenging the award dated 15.04.2005 in M.V.O.P.No.450 of 2000 passed by the Motor Accident Claims Tribunal–cum–District Judge, Krishna at Machilipatnam (for short, Tribunal).

2. The said MVOP was filed by the legal representatives of the deceased claiming a compensation of Rs.3,00,000/- for the death of one K.Srinivasa Rao. It was alleged that he died in a motor accident that occurred on 25.06.2000. The Tribunal disposed of the said MVOP along with another MVOP No.449 of 2000, after framing the following issues.

- “1. Whether the accident was due to rash and negligent driving of the mini lorry bearing No.A.P.26T 9216 by its driver/R-1?
2. Whether the petitioners are entitled to any compensation? If so, to what amount and from which of the respondents?
3. To what relief?”

3. In respect of first issue, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the mini lorry bearing No.AP26T 9266. However, with regard to the second issue, the Tribunal gave a finding that the petitioners failed to establish that the deceased was the owner of centring material and he cannot be termed even as authorized representative or the owner of the goods. It held that he was an unauthorized passenger while awarding compensation of Rs.2,00,000/-. It categorically held that the third respondent insurance company was not liable to pay the compensation. However, in view of the decision in **National Insurance Company Limited v. Baljit Kaur**^[1], the insurance company was directed to pay compensation to the claimants and recover the same by initiating proceedings before the executing Court without filing suit against the owner.

4. But, in the case of unauthorized passenger, the law is settled by the Supreme Court which held that the insurance company is not liable to pay any compensation. The principle of pay and recovery is applicable only in a case of violation of policy conditions and this is not a case of violation of policy conditions.

5. In the circumstances, the appeal is allowed, but however, the award passed in favour of the owner is confirmed. The appellant deposited half of the compensation amount including interest and costs by virtue of an order passed by this Court on 05.09.2005 while admitting the appeal and the said amount was withdrawn pursuant to a subsequent order dated 04.04.2006. This Court does not want to disturb the order, but gives liberty to the appellant to recover the said amount from the owner of the vehicle. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Date: 10.12.2015
TJMR

[\[1\]](#) 2004 (2) ALT 33 (SC)