THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.No.2417 of 2005

JUDGMENT:

This appeal is preferred by the second respondent - insurance company in O.P.No.2241 of 2002 on the file of the Court of XII Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad (for short, Tribunal) challenging the direction to pay the compensation to the claimant and recover the same from the first respondent - owner.

2. The first respondent herein filed the said OP claiming a compensation of Rs.75,000/- for the injuries sustained by her in a motor accident that occurred on 14.09.1997 when she was traveling in the auto bearing No.AP9T 16.

3. The Tribunal, by its Award dated 19.11.2004, awarded an amount of Rs.34,500/- with proportionate costs and interest thereon @ 9% per annum from the date of petition till realization as against respondents 1 and 2 therein (appellant and the second respondent herein) by directing the appellant and the owner to pay the compensation jointly and severally. Challenging the liability of the insurance company, the above appeal is filed.

4. The Tribunal, in its Award, gave a finding that the claimant was traveling in the crime vehicle as an unauthorized passenger. The only point that is urged by the learned counsel for the appellant is that in view of the decision of the Supreme Court in **National Insurance Co. Ltd. v. Bommithi Subbhayamma**[1]**,** in respect of an unauthorized passenger, the insurance company cannot be asked to pay compensation and recover it from the owner as there was no liability to pay compensation.

5. In view of the above authoritative pronouncement, the Award passed by the Tribunal making the insurance company also liable to pay the amount awarded, is set aside, but however, giving liberty to the

claimant to recover the amount awarded from the owner of the vehicle.

6. It is submitted by the learned counsel for the appellant that in order to satisfy the statutory requirement, the appellant insurance company deposited half of the decretal amount to the credit of the OP and the said amount is lying in deposit with the Tribunal. In view of allowing the appeal, it is needless to observe that the appellant insurance company shall be permitted to withdraw the said amount.

7. Accordingly, the appeal is allowed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Date: 19.01.2016
TJMR

[1] (2005) 12 SCC 243