

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-
M.A.C.M.A.No.228 of 2005

JUDGMENT:

This appeal is preferred by the third respondent - insurance company in O.P.No.20 of 2001 on the file of the Court of the Motor Accidents Claims Tribunal (District Judge), West Godavari at Eluru (for short, Tribunal) challenging the direction to pay and recover from the second respondent - owner.

2. The legal representatives of the deceased, Abbindi Dharma Rao, who is the husband of the first respondent, father of the second respondent and son of respondents 3 and 4, filed the said OP claiming a compensation of Rs.1,50,000/- for his death in a motor accident that occurred on 05.05.1999 when he was traveling in a lorry bearing No.ABW 2277 along with goods.

3. The Tribunal, by its Award dated 20.07.2004, awarded an amount of Rs.1,44,800/- towards compensation with proportionate costs and interest thereon @ 9% per annum from the date of petition till realization by making insurance company also liable to pay compensation jointly and severally along with the owner and the driver. The Tribunal also directed the insurance company to deposit the said amount initially and recover the same from the owner by initiating execution proceedings without filing a separate suit. Challenging its liability, the insurance company filed the present appeal.

4. The Tribunal, in its Award, gave a finding that the claimant was traveling in the crime vehicle as an unauthorized passenger.

5. 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.

6. In view of the above authoritative pronouncement, the Award passed by the Tribunal making the insurance company also liable to pay the amount awarded and also to pay and recover the compensation, is set aside, but however, giving liberty to the claimant to recover the amount awarded from the owner of the vehicle.

7. This Court granted stay, by order dated 07.02.2005, on the condition of appellant depositing half of the amount awarded along with proportionate interest and costs. In the circumstances, the appellant is permitted to withdraw the said amount, if lying in deposit with the Tribunal.

8. 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: 25.01.2016
TJMR

[\[1\]](#) (2005) 12 SCC 243