

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.M.A. Nos.2333, 2645 and 2923 of 2004

COMMON JUDGMENT:

These three appeals are being disposed of by this common judgment as they are connected with a batch of cases, arising out of the same accident.

In one of the cases, arising out O.P. No.418 of 1997 dated 19.03.2001, C.M.A. No.2925 of 2004 was filed. In the said O.P., an award was passed for an amount of Rs.1,24,000/- for the death of the claimant's wife in the accident. It was contended before the Tribunal that the vehicle was used for transportation of passengers in violation of the terms and conditions of the policy and the Insurance Company was not liable to indemnify the insured. The said contention was negatived by the Tribunal as well as by this Court also. This Court took into consideration the decision of the Supreme Court in **New India Assurance Company Limited v. Asha Rani**^[1] and the clarification given in the decision in **National Insurance Company Limited v. Baljit Kaur**^[2], which gives prospective effect to the ratio decided in the case of **Asha Rani** (supra). Keeping in view the said ratio of the Supreme Court, this Court held that the Insurance Company has to pay the amount as per the decree and recover it from the owner of vehicle, as the Insurance Company cannot be held liable to indemnify under the policy of insurance.

Since these cases also arise out of the same accident and the Tribunal has passed separate orders, these appeals are also disposed of in terms of the order passed in C.M.A.No.2925 of 2004, dated 03.09.2004, holding that the insurer shall satisfy the decree, but can proceed against the owner of vehicle for recovery

of the decretal amount by filing an execution petition without there being need for any separate suit.

Accordingly, these appeals are partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in these Appeals shall stand closed.

A.RAMALINGESWARA RAO, J

10.02.2016

MVA

[\[1\]](#) (2003) 2 SCC 223

[\[2\]](#) 2004(1) ALD 98 (SC)