

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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M.A.C.M.A.No.2276 of 2005

JUDGMENT:

This appeal is preferred by the respondents 3 and 4 - insurance company in M.V.O.P.No.1056 of 2001 on the file of the Court of Motor Accidents Claims Tribunal-cum-VI Additional District Judge (III-Fast Track Court), Warangal at Mahabubabad (for short, Tribunal) challenging the direction to pay and recover from the second respondent - owner.

2. The first respondent herein filed the said OP claiming a compensation of Rs.1,50,000/- for the injuries sustained by him in a motor accident that occurred on 22.01.2001 when he was traveling in trailer of the tractor bearing No.AP7T 7018, 7019.

3. The Tribunal, by its Award dated 05.04.2005, awarded an amount of Rs.84,500/- with proportionate costs and interest thereon @ 9% per annum from the date of petition till realization as against respondents 1 and 2 therein (respondents 2 and 3 herein) and dismissed the claim against the insurance company, but directed the insurance company to deposit the said amount initially and recover the same from the owner by initiating appropriate proceedings. Challenging that portion of the finding, 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. Now the law is well settled that in respect of unauthorized passengers traveling in goods vehicles, even principle of pay and

recover cannot be made applicable.

6. In the circumstances, the appeal is allowed to the extent of directing the appellant insurance company to pay and recover the compensation amount from the owner of the vehicle. However, the claimant is entitled to initiate proceedings against the owner for recovery of the awarded amount.

7. This Court initially granted stay, by order dated 13.09.2005, on the condition of appellant depositing half of the decretal amount awarded by the Tribunal along with proportionate interest and costs and the said order was made absolute on 09.12.2005, giving liberty to the claimant to withdraw the half of the decretal amount without furnishing any security. In the circumstances, the appellant is permitted to recover the amount paid to the claimant from the owner by filing execution proceedings.

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: 19.01.2016
TJMR

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