

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A. No.2440 of 2005

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JUDGMENT:

This appeal is preferred by respondent No.2-Insurance Company in O.P. No.1439 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-V Additional District Judge, Nalgonda at Miryalaguda.

The said O.P. was filed by respondent No.1 herein claiming compensation of Rs.50,000/- for the injuries sustained by him in a motor accident that occurred on 10.12.1992 at about 1.30 P.M. near Choutappally Village, Nalgonda District, caused by lorry bearing registration No.AP-9-T-6354.

The Tribunal, on the basis of oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the lorry by its driver.

With regard to the compensation, the Tribunal observed that the claimant was entitled to an amount of Rs.20,000/-. The Tribunal noticed that as per Ex.A2, the claimant was travelling as a passenger along with four more passengers in the lorry and the policy of insurance, issued by respondent No.2, does not cover the liability. However, in view of the decision of the Supreme Court in **National Insurance Company Limited v. Baljit Kaur**, respondent No.2 shall pay the amount of compensation to the claimant and recover the same from the insured by way of execution.

The present appeal is filed solely on the ground that though such observation was made in the body of judgment in the relief portion as well as in the decree passed by the Tribunal, the appellant was not given liberty to recover the amount from the owner of vehicle by filing an execution petition.

This Court, by order dated 16.09.2005, granted interim stay on condition of depositing the entire amount and permitting the claimant to withdraw the said amount without furnishing security. The said order was modified, by order dated 28.09.2005, permitting the claimant to withdraw only half of the amount

deposited, though the appellant deposited the entire amount. However, in this appeal we are concerned with the liability of appellant. As the claimant was a passenger in a goods vehicle, the policy of insurance, issued by respondent No.2, does not cover such liability. The appellant shall pay the amount of compensation and recover the same from the owner of vehicle by way of execution petition.

In the above circumstances, the award passed by the Tribunal, dated 19.11.2004, is modified giving liberty to the appellant-respondent No.2 to recover the amount from the owner of vehicle by filing an execution petition. In all other respects, the said award stands as it is.

Accordingly, this Appeal is allowed. No order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

03.02.2016

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