THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.Nos.1559, 1315 & 1332 of 2005

COMMON JUDGMENT:

These three appeals are being disposed of by this common judgment after hearing counsel for both sides as the point involved in all the appeals is with regard to liability of the insurance company, appellant.

2. These appeals arose out of MVOP.Nos.357, 535 and 539 of 2002 on the file of the Court of III Additional District Judge, Kakinada (for short, Tribunal) for the death and injuries of persons traveling in a lorry bearing No.AP5X 568 for loading and unloading purpose on 05.01.2002. When they were traveling along with other coolies to Rowthulapudi from Virava for loading and unloading the bricks, and when the lorry reached Nellipudi Village at about 1.00 am., due to rash and negligent driving of the driver of the lorry, it turned turtle. The legal representatives of the deceased and injured filed claim petitions i.e., MVOP.Nos.357, 535 and 539 of 2002 and they were allowed for an amount of Rs.1,12,400/-, Rs.13,000/- and Rs.29,000/- respectively, by separate Awards of the Tribunal dated 07.03.2005. Challenging liability to pay compensation, the present appeals are filed.

3. The only ground raised by the learned counsel for the appellant is that since the deceased and injured were traveling as coolies in a lorry which they were not authorized to travel, the insurance company is not liable to pay compensation. He relied on **National Insurance Co. Ltd. v. Bommithi Subbhayamma**[1].

4. In view of the above authoritative pronouncement, the Awards passed by the Tribunal making the insurance company also liable to pay the amount awarded, are set aside, but however, giving liberty to the claimants to recover the amounts awarded from the owner of the vehicle.

5. It is submitted by the learned counsel for the appellant that in order to satisfy the statutory requirement, the appellant insurance company deposited an amount of Rs.25,000/-, Rs.6,500/- and Rs.14,500/- to the credit of O.P.Nos.357, 535 and 539 of 2002 respectively and the said amounts are lying in deposit with the Tribunal. In view of allowing the appeals, it is needless to observe that the appellant insurance company shall be permitted to withdraw the said amounts.

6. Accordingly, the appeals are allowed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Date: 18.01.2016
TJMR

[1] (2005) 12 SCC 243