

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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M.A.C.M.A.No.2275 of 2005

JUDGMENT:

This appeal is preferred by the third respondent - insurance company in O.P.No.185 of 2001 on the file of the Court of VI Additional District Judge (Fast Track Court), East Godavari at Rajahmundry (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.1,00,000/- for the injuries sustained by him in a motor accident that occurred on 14.05.2000 when he was traveling in Allwyn Mahindra Goods Van bearing registration No.AP5T 7377.

3. The Tribunal, by its Award dated 30.04.2005, awarded an amount of Rs.1,00,000/- with proportionate costs and interest thereon @ 6% 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 execution proceedings without filing a separate suit. 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 30.09.2005, on the condition of appellant depositing half of the amount awarded along with proportionate interest and costs and the said order was made absolute on 10.04.2006, giving liberty to the claimant to withdraw an amount of Rs.25,000/- and the amount deposited towards interest and costs without furnishing any security. In the circumstances, the appellant is permitted to withdraw the balance amount lying in deposit with the Tribunal and the amount paid to the claimant can be recovered 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