

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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C.M.A. No.4469 of 2003

JUDGMENT:

This appeal is preferred by respondent No.3-Insurance Company in O.P. No.943 of 1997 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Khammam.

The said O.P. was filed claiming a compensation of Rs.1,50,000/- for the death of the daughter of claimants 1 and 2. It was alleged that on 10.06.1996 at 13.30 hours while the daughter of claimants and some others were returning to their village, Islavath Thanda in a tractor bearing registration No.AP-36-T-5593/5594 after attending a marriage and when they reached a turn after passing Kamepally village, the driver of tractor, who is respondent No.1, drove the tractor in a rash and negligent manner with high speed and stepped over the concrete situated by the side of the road. In the said accident, the tractor turned turtle and the daughter of claimants died on the spot.

Before the Tribunal, respondent No.1 remained *ex parte* and respondent No.2, though appeared through counsel, did not file any written statement; respondent No.3-Insurance Company filed counter opposing the claim.

On the basis of evidence, the Tribunal held that the accident was occurred due to rash and negligent driving of the driver of tractor. The Tribunal awarded an amount of Rs.80,000/-, by its award dated 23.01.2003.

The present appeal is filed by the Insurance Company stating that the deceased was an unauthorised passenger and the Insurance Company was not liable to pay the compensation.

Even as per the claim petition, the deceased and some

others were returning to their village in a tractor bearing registration No.AP-36-T-5593/5594 after attending the marriage. The deceased and others were not supposed to travel in a tractor. Thus, there is a violation of conditions of the policy.

In respect of the unauthorised passenger, as per the decision in **New India Assurance Company Limited v. Asha Rani** ^[1] rendered by the Supreme Court, the Insurance Company is liable to pay the compensation and recover it from the owner of vehicle by filing an execution petition.

This Court, by order dated 04.12.2003, granted stay on the condition of the appellant depositing half of the amount awarded by the Tribunal along with proportionate costs and interests within six weeks from that day, and further by order dated 04.10.2005, the claimants were permitted to withdraw the amount, deposited by the appellant, in the same proportion as awarded by the Tribunal without furnishing any security.

In view of the above settled legal position, the appellant is directed to deposit the balance amount also and the claimants are entitled to withdraw the said amount without furnishing any security. The appellant can recover the amount awarded from the owner of vehicle by filing an execution petition.

Accordingly, this appeal is allowed to the extent indicated above. No order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

03.02.2016
MVA

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