

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.M.A. No.2987 of 2003

JUDGMENT:

This appeal is preferred by respondent No.2-Insurance Company in O.P. No.226 of 1998 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Medak at Sangareddy.

The said O.P. was filed claiming a compensation of Rs.1,50,000/- for the death of the son of claimants 1 and 2. It was alleged that on 15.12.1996 when one Rajender and Kishan were going in a D.C.M. Van bearing registration No.AP.9T 4315 and when they reached the outskirts of Pothamshetpally, the driver of van drove it in a rash and negligent manner and dashed against a Mini Bus bearing registration No.AP.23-T 194. In the said accident, the said two persons died.

Before the Tribunal, the owner of vehicle remained *ex parte* and the case was contested by respondent No.2-Insurance Company.

On the basis of evidence, the Tribunal held that the accident was occurred due to rash and negligent driving of the driver of the van by its driver. The Tribunal awarded an amount of Rs.72,600/-, by its award dated 25.08.2001.

The present appeal is filed by the Insurance Company stating that the deceased was a gratuitous passenger and the Insurance Company was not liable to pay the compensation. The Tribunal negated the contention by holding as follows:

“The evidence of RW.1 goes to show that, there was a breach of conditions of Policy, and as it is a goods Vehicle, the deceased persons were Gratuitous travellers, there is no liability. According to him, a bond said to have been executed by the owner. It is a matter

of contract between the insurance company and the owner. Even if the Vehicle is a goods Vehicle, five persons are entitled to travel in the Vehicle. The claim in this case relates to two deceased persons and nothing was shown that other persons have filed any claim. Furthermore, as per the decision reported in A.I.R. 2000 SUPREME COURT, Page 235, even in goods Vehicle, if there is gratuitous passenger, the insurance company is liable to pay the compensation. Therefore, the respondents are jointly and severally liable to pay the compensation. Accordingly, the points are answered.”

In respect of the gratuitous 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 14.02.2002, granted stay on the condition of the appellant depositing half of the amount awarded and the respondents were given liberty to withdraw their proportionate major shares 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 said amount 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