

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.M.A.NO.4653 OF 2003

JUDGMENT:

This appeal is preferred by the appellant-Insurance Company against the order, dated 20-12-2002 in M.O.P.No.803 of 1999 on the file of the M.A.C.T.-cum- District Judge, Vizianagaram (for short 'the Tribunal).

2. The appellant herein is the 3rd respondent, whereas the 1st respondent herein is the petitioner and the respondent 2 and 3 herein are the respondents 1 and 2 before the Tribunal.

3. For the sake of convenience, the parties herein after will be referred to as they were arrayed before the Tribunal.

4. Petitioner filed the above O.P. claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the accident that occurred on 16-07-1999 at about 8.00 A.M., It was alleged that he was working as a Carpenter in Visakhapatnam and earning Rs.100/- per day. On the date of accident, after completing the work, he boarded a lorry bearing No. AP 31 T 9477 and due to rash and negligent driving of the lorry by its driver, the lorry turned turtle, as a result of which, he sustained injuries. Hence, the claim petition.

5. The owner of the vehicle remained ex-parte and the case was contested by the Insurance Company mainly on the ground that the petitioner was travelling in a vehicle in violation of the conditions of policy and hence, it is not liable to pay the compensation.

6. Basing on the above pleadings, the Tribunal framed an issue with regard to entitlement of the petitioner for compensation.

7. On behalf of the petitioner, P.Ws. 1 and 2 were examined and Exs.A1 to A10 and Ex.X1 were marked. On behalf of the respondents, R.Ws. 1 and 2 were examined and Exs.B1 and B2 were marked.

8. On the basis of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent

driving of the lorry by its driver.

9. The Tribunal computed the compensation at Rs.1,05,000/- along with interest at 9% p.a., and directed the 3rd respondent to deposit the said amount and recover the same from the insured-2nd respondent vide impugned order.

10. The present appeal is filed on the ground that there is violation of conditions of policy and the Insurance Company was not liable to pay compensation. But the award of the Tribunal is correct as per ratio laid down in a decision reported in **NEW INDIA ASSURANCE CO., LTD V ASHA RANI** ^[1] and in view of clarification issued in a decision reported in **NATIONAL INSURANCE COMPANY LTD., V BALJIT KAUR AND OTHERS** ^[2] and since the accident occurred on 16-07-1999, the award of the Tribunal cannot be found fault. In view of the same, the appeal fails and is liable to be dismissed.

11. Accordingly, the appeal is dismissed confirming the order, dated 20-12-2002 in M.O.P.No.803 of 1999 passed by the Tribunal. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 03-02-2016

Hsd

^[1] (2003) 2 SCC 223

^[2] 2004(1) ALD 98 (SC)