

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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C.M.A. No.485 of 2004

JUDGMENT:

This appeal is preferred by respondent No.3-Insurance Company in O.P. No.238 of 1991 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, West Godavari at Eluru (for short, 'the Tribunal').

The said O.P. was filed claiming a compensation of Rs.1,00,000/- for the death of Chitturi Gangabhavani, who is the wife of petitioner No.1 and mother of petitioners 2 and 3. It was alleged that the petitioners went to the marriage of the brother of Rajeswari, which was performed at Mulanka of Krishna District, and after attending the marriage they hired a mini van bearing registration No.AHP 5055 and while returning to bridegroom's place when the van reached Samudrapugattu, respondent No.1 drove the van in a rash and negligent manner and the van fell into a bode and the Chitturi Gangabhavani, Rajeswari and one minor boy died in the said accident.

Before the Tribunal, respondent Nos.1 and 2 remained *ex parte* and 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 respondent No.1. The Tribunal awarded a compensation of Rs.25,000/- for no fault liability, by its award dated 29.04.1997, out of which petitioner No.1 was awarded an amount of Rs.15,000/- and petitioners 2 and 3 were awarded an amount of Rs.5,000/- each.

The present appeal is filed by the Insurance Company stating that the deceased was a mere 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 from Mulanka of Krishna District in a mini van bearing registration No.AHP 5055 after attending the marriage of the brother of Rajeswari. The deceased and others were not supposed to travel in a mini van. 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, as clarified by the said Court in the decision of **National Insurance Company Limited v. Baljit Kaur**^[2] the Insurance Company is liable to pay the compensation initially and recover it from the owner of vehicle by filing an execution petition.

This Court, by order dated 27.01.1998, granted stay on the condition of the appellant depositing half of the awarded amount within thirty days from that day.

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 partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

08.02.2016
MVA

^[1] (2003) 2 SCC 223

[\[2\]](#) 2004(1) ALD 98 (SC)