

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.M.A.No.3750 OF 2002

JUDGMENT:

The insurance company is the appellant in this Appeal filed challenging the Award dated 12.11.2001 in O.P.No.751 of 1998 passed by the District Judge, Ongole (for short "the Tribunal").

Respondent No.1 is the claimant, who was injured in the accident occurred on account of the collision of the Mini Lorry bearing No. APD-6120, owned by the 2nd respondent, with another lorry bearing registration No. T.N.45/H-4133, belonging to 3rd respondent. The 4th respondent is the insurer of the vehicle of the 3rd respondent. The Tribunal found that the petitioner suffered certain injuries on account of the collision of the 2nd respondent's vehicle that of the 3rd respondent. However, the Tribunal based on the evidence adduced and material placed before the Court, found that the claimant was an agriculturist and got into the vehicle of the 2nd respondent as a passenger by paying fair for travelling in the vehicle. The Tribunal, following the decision of the Supreme Court in **New India Assurance Company Vs. Satpal Singh and Others**¹, found that the Insurance Company is liable to pay the damage which occurred and awarded a sum of Rs.38,000/- with interest at the rate of 9% per annum with effect from 24.12.1998.

Heard the learned counsel for the appellant company. No representation for the respondents. During the pendency of the

¹ AIR 2000 SC 235

Appeal, respondents 1 and 3 died and their Legal Representatives were brought on record. However, there is no representation on their behalf before the Court.

As can be seen from the material on record, the accident is not in dispute and also the damage which has been suffered by the claimant. So far as Award of compensation is concerned, the Tribunal based on Exs.A1 and A3 and on appreciation of the evidence of the P.Ws. 1 and 2 and Exs.A4 and A5 and also taking into consideration the expenditure involved and also under the head of 'pain and suffering' and 'loss of earnings', had awarded a sum of Rs.38,000/-. There being no other material before this Court, the quantum of compensation awarded to the claimant, cannot be interfered with.

In so far as the liability of the Insurance Company is concerned, the Court below fixed the liability on the Insurance Company based on the judgment of the Supreme Court in **Satpal Singh case** (1 supra), which was holding field at the relevant point of time. It has been held that Insurance Company is jointly and severally liable to pay the compensation in respect of gratuitous passengers in a goods vehicle. The ratio laid down in **Satpal Singh case** (1 supra) has been overruled by the Supreme Court in the case of **New India Assurance Company Limited Vs. Asharani and others**² and it has categorically been held that the Insurance Company shall settle the claims with respect to the claimant and they shall be at liberty to recover the same from the owner of the vehicle. The Judgment of the

² Judgment II (2001) ACC 479 (SC)

Asharani case (2 supra) was followed by this Court in **Nagula Tulasamma and another v Golangi Bhoopathi and others**³.

In the light of the law laid down by the Supreme Court, as followed by this Court, the Appeal is disposed of with the following directions:

- 1) the appellant shall pay the amount of compensation determined by the Tribunal to the claimants; and
- 2) the appellant shall be at liberty to recover the same from the respondent No.2-lorry owner.

There shall be no order as to costs. Miscellaneous Petitions, pending if any, in this Appeal shall also stand closed.

CHALLA KODANDA RAM, J

Dated:06.12.2017.

Ssv

³ 2015 (1) ALD 613