

THE HONOURABLE SRI JUSTICE GHULAM MOHAMMED

M.A.C.M.A No.794 of 2005

JUDGMENT:

This appeal is filed against the order dated 27.02.2002 passed in M.V.O.P.Nos.316 of 2000 on the file of the II Additional District Judge-cum-Motor Accidents Claims Tribunal, Kurnool.

2. The claimant/respondent herein filed the O.P seeking compensation of Rs.70,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 20.07.1998 involving a lorry bearing registration No.AP04U 0909. As against the claim of Rs.70,000/-, the Tribunal granted a compensation of Rs.36,500/- directing the respondents to pay the said compensation. Assailing the same, the 2nd respondent-Insurance Company in the O.P filed this appeal.

3. Heard learned counsel for the appellant-Insurance Company and the learned counsel for the respondent/claimants. Perused the impugned order passed by the Tribunal.

4. There is no dispute as to the date and nature of the accident. It was stated that on 20.07.1998 at 3.30 PM, the petitioner along with another person was travelling in a lorry bearing

No.AP 04U 0909 and that the driver of the lorry drove the vehicle at high speed and lost control over the same and the lorry turned turtle as a result of which the petitioner sustained grievous injuries and fractures all over the body. The Tribunal awarded a lump sum of Rs.70,000/-. Hence this appeal by the Insurance Company.

5. On perusing the material available on record, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the lorry and awarded a compensation of Rs.70,000 to the claimant directing the respondents therein to pay the compensation.

6. While the 1st respondent-owner of the lorry was set *ex parte*, before the Tribunal, the appellant-Insurance Company contends that in view of the decision reported in Asha Rani's case the appellant is not liable to pay the compensation.

7. As seen from the record, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the lorry and that the injured travelled as a gratuitous passenger. It is represented by the learned counsel for the appellant that the claimant travelled as gratuitous passenger and that the matter is squarely covered by the judgment of the Supreme Court reported in ***New India Assurance Co. Ltd. Vs. Asha Rani*** [\[1\]](#). Following the said judgment and for the reasons given therein, the appeal is partly allowed exonerating the Insurance Company to pay compensation and the amount if any to be paid, may be recovered from the owner of the vehicle.

8. Accordingly, with the above modifications, this appeal filed by the appellant-insurance company is partly allowed. In the circumstances of the case, there shall be no order as to costs.

GHULAM MOHAMMED, J

Date:31.03.2011
KK/SP

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March 31, 2011

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[\[1\]](#) AIR 2003 SC 607