

(2014) 06 AP CK 0103
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 1061 of 2005

The National Insurance Company Ltd.	APPELLANT
Vs	
Polagani Bharathamma	RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Citation : (2014) 06 AP CK 0103

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : A. Veera Swamy, Advocate for the Appellant; Kiran Palakurthi, Advocate for the Respondent

Judgement

B. Chandra Kumar, J.—This appeal arises out of the award passed by the Tribunal dated 09.08.2004 in O.P. No. 1310 of 2002 by the Principal Motor Accident Claims Tribunal, Nalgonda (for short "the Tribunal").

2. The parties hereinafter referred to as arrayed before the Tribunal for the sake of convenience.

3. The brief facts of the case are as follows:

4. On 14.10.2002 the offending lorry bearing No. AP-24-11-434 being driven by its driver in rash and negligent manner at high speed dashed against the car bearing No. AP-10-N-7222 as a result of which the lorry turned turtle and the persons travelling on the lorry fell down and the cement bags fell on them resulting in the death of those persons. The claimants are the wife and minor daughters and minor son of the deceased. Their case is that the deceased was aged about 40 years and earning Rs. 5,000/- per month from Kirana business and he was having heavy motor driving license. They claimed a total compensation of Rs. 2,00,000/-. The Tribunal awarded a compensation of Rs. 2,82,660/- and directed the insurance company to pay the amount and recover the same from the owner of the vehicle.

5. As seen from the facts of the case, when the lorry dashed against the car, it turned turtle and the persons sitting on the cement bags fell down and the cement bags fell on them, the deceased is also one among them, whether the deceased could be treated as unauthorized passenger. As long as the victim was sitting on the cement bags it may be said that he is a passenger traveling in the lorry. However, the moment he fell down from the lorry and touched the ground for all particular purposes he becomes a third party. He cannot be treated as passenger at that time. Therefore, it appears to be incorrect to say that the deceased was an unauthorized passenger, when he sustained injuries which proved fatal.

6. The main contention of the learned counsel for the insurance company is that when the claimants have claimed only Rs. 2,00,000/- the Tribunal is not justified in awarding Rs. 2,82,660/-. The law has been well settled on this aspect. The Apex Court in *Rajesh and Others Vs. Rajbir Singh and Others*, categorically observed that the Tribunal has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation if necessary ignoring the claim made in the application for compensation. It is also clear that a report filed by a police officer has to be treated as an application for compensation. When a report filed by the police is to be treated as an application, it makes clear that the claimants need not claim any specific amount.

7. In the light of above referred Supreme Court decision, I am of the view that there is nothing to interfere with the judgment of the Tribunal. Accordingly, the appeal is dismissed. No costs. In view of the latest judgments of the Supreme Court, the rate of interest will be 7.5% per annum from the date of petition till realization.

8. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.