

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1213 OF 2005

AND

CROSS OBJECTION (SR) No.38244 OF 2009

IN

M.A.C.M.A. No.1213 OF 2005

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COMMON JUDGMENT:

The 2nd respondent – Andhra Pradesh State Road Transport Corporation (APSRTC) is the present appellant. Aggrieved by the order and decree, dated 26-08-2004, in M.V.O.P. No.379 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Warangal (for short 'the Tribunal'), whereby and where-under, as against the claim of Rs.2,22,000/- (Rupees two lakhs and twenty two thousand) laid under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act'), read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules') for the death of minor daughter of the petitioners, an amount of Rs.75,000/-(Rupees seventy five thousand) was granted, fastening liability on APSRTC, while exonerating respondent Nos.1 and 3, owner and insurer of bus bearing registration No.AP 36U 8238, the instant appeal is preferred.

2. The appellant herein is respondent No.2 – APSRTC in the O.P. before the Tribunal, while respondent Nos.1 and 2 are petitioners and respondent Nos.3 and 4 are respondent Nos.1 and 3, respectively.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 25-03-2003, the daughter of petitioners –

Jangili Puja, aged 8 years, having attended the school, was returning home at about 12.30 P.M., and when she was crossing the road, a bus bearing registration No.AP 36U 8238 owned by the 1st respondent and hired to the 2nd respondent – APSRTC, driven at high speed in a rash and negligent manner, came and hit her, due to which, she fell down and died instantly. The petitioners claiming that she was studying second class, sought, originally, Rs.1,50,000/- (Rupees one lakh and fifty thousand) and later amended the claim and thereby sought Rs.2,22,000/- (Rupees two lakhs and twenty two thousand) as compensation.

5. Respondent No.1, owner of the bus, remained *ex parte* before the Tribunal.

6. The 2nd respondent – APSRTC filed counter opposing the claim, disowning rash and negligent driving attributed to the driver of bus and, since the bus was insured with the 3rd respondent, sought to dismiss the claim petition against it.

7. Respondent No.3 - Insurance Company opposed the claim, contending that possession of the bus was with the 2nd respondent and, therefore, respondent Nos.1 and 2 are liable to pay compensation and, thereby sought to dismiss the claim against the insurer.

8. Based on the pleadings, the Tribunal formulated three points about the responsibility for the accident. During inquiry before the Tribunal, the 1st petitioner besides examining himself as PW.1, has examined one J. Yakaiah as PW.2, an eye-witness to the occurrence, and marked Exs.A-1 to A-5. On behalf of the respondents, one A. Jeevan Reddy was examined as RW.1 and marked hire agreement as Ex.B-1.

9. The Tribunal has taken up both point Nos.1 and 2 for common discussion and while determining the compensation, observing that the deceased was aged 8 years and, therefore, there cannot be any earnings to be decided for her

and, as such, to meet the ends of justice, an amount of Rs.75,000/- was granted towards compensation. The Tribunal basing on Ex.B-1, hire purchase agreement, entered into by the 1st respondent with the 2nd respondent, finding from the cross-examination of RW.1, Depot Manager, that the driver was provided by the owner of the vehicle and placing reliance on the decision of this Court in **New India Assurance Co. Ltd. v. B.G. Suma and Ors.**, the 2nd respondent alone is liable to pay compensation and, thereby, dismissed the claim petition against the 1st and 3rd respondents.

10. It is the aforementioned order which is under challenge in the instant appeal, mainly contending in the grounds that as per clause 5(4) of the hire agreement, owner and insurer are liable to pay compensation and, therefore, sought to allow the appeal.

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11. The petitioners have also filed Cross Objection (SR) No.38244 of 2009, contending in the grounds, that the Tribunal did not appreciate the evidence in proper perspective in fixing liability on respondent Nos.1 and 3, who are owner and insurer of the vehicle and as per clause 5 (4) of Ex.B-1, owner and insurer are liable to pay compensation and, therefore, sought to grant balance amount.

12. Heard Sri B. Mayur Reddy, learned Standing Counsel for the appellant - APSRTC, and Sri V. Venkatarami Reddy, learned counsel for the 3rd respondent – Insurance Company. There is no representation for other respondents, despite listing the matter to afford an opportunity for tendering arguments on their behalf.

13. During the course of arguments, the learned counsel for the 3rd respondent – Insurance Company has fairly conceded that as per the decision rendered by the Full Bench of this Court, Insurance Company cannot be exonerated from its liability to indemnify the 1st respondent, owner of the vehicle, and to pay the compensation as ordered. But, according to the learned counsel the Hon'ble

Apex Court in **Purnya Kala Devi v. State of Assam and Anr.**, the hirer alone is liable to pay the compensation. The Hon'ble Supreme Court while explaining the definition and expression 'owner' occurring in Section 2(19) of the 1939 Act, where the person in possession of a motor vehicle is a minor, guardian of such minor and in relation to a motor vehicle, which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement, referred to the State Legislation of Assam, particularly, Section 2(b) of the Assam Act, which defines the expression 'owner' observing that it is almost identical with the definition under Section 2(19) of the 1939 Act and basing on Section 5(1) of the Assam Act, where it was found that no release order was passed releasing the vehicle, held that the State Government was liable to pay compensation. But, it was clear from the facts therein that the vehicle was not insured with the Insurance Company.

14. The learned counsel for the appellant placed reliance on the decision of Full Bench of this Court in **APSRTC, rep. by its General Manager (Now Redesignated as Managing Director), Musheerabad, Hyderabad and Others v. B. Kanaka Ratnabai and Others**, while observing that the Insurance Company shall be solely and exclusively liable for payment of compensation arising out of such passengers/third party claims notwithstanding the hiring of insured buses by the owners to APSRTC, held in paragraph No.'85' thus:

"85. On the above analysis, we hold that mere hiring of insured buses by the owners to the APSRTC would not in any manner limit the liability and accountability of the Insurance Companies, be it under the Act of 1988 or the Act of 1939, to honour passengers/third party risks covered by the Insurance Policies issued by them in favour of the owners. Notwithstanding the hiring of insured buses by the owners to the APSRTC, the Insurance Companies shall be solely and exclusively liable for payment of the compensation arising out of such passengers/third party claims unless any of the grounds in Section 149(2) of the Act of 1988/Section 96(2) of the Act of 1939 are made out. We therefore affirm the view taken by the Full Bench of this Court in *Madineni Kondaiah's* case (supra), which was approved and upheld by the Supreme Court in *G.Govindan's* case (supra) and applied thereafter in *Rikhi Ram's* case (supra). We answer the question referred to us

for decision accordingly. All the matters shall be placed before the appropriate Courts for individual adjudication.”

15. For the aforesaid reasons, and since in **Purnya Kala Devi’s case** (Supra 2) the bus was not insured and also for the reason, even accepting for a moment that the clause 5(4) of the hire agreement operates, still, the Corporation can only be construed as the owner, and following the decision rendered by the full bench of this Court in **B. Kanaka Ratnabai’s Case**

(Supra 3), the order under challenge is set aside so far as appellant is concerned, dismissing the claim petition against appellant, while holding that the 1st respondent, owner and the 3rd respondent, insurer, are liable to pay compensation determined by the Tribunal.

16. Turning to cross-objection, the petitioners sought to grant Rs.2,22,000/-. The Tribunal has granted Rs.75,000/-, observing that the deceased was aged 8 years and there cannot be any earnings to be decided further. But, in view of the decision of the Hon’ble Supreme Court in **Puttamma and others v. K.L. Narayana Reddy and anr.**, though, the deceased was not an earning member, still, the petitioners are entitled to Rs.1,50,000/- as she was aged exceeding 5 years. Concerning interest, the Tribunal granted the same at 9% per annum, but the same is reduced to 7.5% per annum as per the decision of the Hon’ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

17. In the result, the appeal is allowed fastening liability on the insured and insurer i.e. respondent Nos.1 and 3, while dismissing the claim petition against the 2nd respondent – APSRTC. Further, Cross-Objection (SR) No.38244 of 2009 filed by the petitioners is allowed in part, and the order and decree, dated 26-08-2004, in M.V.O.P. No.379 of 2003, passed by the Tribunal are modified, enhancing the compensation to Rs.1,50,000/- (Rupees one lakh and fifty thousand) from Rs.75,000/- (Rupees seventy five thousand) with interest thereon at 7.5% per annum from the date of petition till realization. The compensation shall be apportioned between the petitioners in the same proportion in which the original compensation was directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

April 07, 2015.

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