

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.615 OF 2006

JUDGMENT:

The second respondent in M.V.O.P.No.644 of 2002 on the file of the Motor Accident Claims Tribunal-cum-II Additional District Judge, Kadapa at Proddatur, is the appellant-insurance company herein. Aggrieved by the order dated 17.10.2005 in the said O.P., whereby and whereunder a sum of Rs.33,800/- was awarded as compensation as against Rs.1,25,000/- claim made by the petitioner for the injuries he sustained, the instant appeal is preferred mainly on the ground that the bus driven by the driver was only hired with APSRTC of the first respondent, owner of the bus and it was under his control and therefore, liability has to be fastened not on the Insurance Company but on the Corporation.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

3. The facts in brief are that on 11.10.2001 at about 6.30 pm, the petitioner and her husband boarded auto bearing registration No.AAD 8281 at Proddatur to reach Kothapalli and when the auto reached near Nagabhushanam Rice Mill on Proddatur-Mydukur main road, the RTC bus bearing registration No.AP-04-T-9225 hired by the first respondent came in opposite direction driven at high speed in rash and negligent manner, dashed against the auto, due to which the petitioner's both bones of left leg below the knee (tibia) fractured and she received grievous bleeding injuries on right leg, above both eyes and lower lip. The bus driver fled away from the place of occurrence. The petitioner was shifted to the Government Hospital, Proddatur, from there she was referred to Government General Hospital, Kadapa, where she was treated as inpatient from 11.10.2001 to 01.11.2001. Later, she took treatment by Dr. Narendra Dev M.S. (Ortho), who issued permanent physical disability certificate, assessing the same at 35%. She states that on account of accident, she became permanently disabled woman, unable to walk properly and

sought the aforementioned amount as compensation.

4. The first respondent-owner of the bus remained *ex parte*.

5. The second respondent opposed the claim raising various pleas. No specific plea was raised by the second respondent-Insurance company in its written statement to fasten liability on the third respondent.

6. Third respondent filed written statement resisting the claim contending that since the bus was insured with the second respondent, the second respondent alone is liable to pay the compensation.

7. The Tribunal framed the following issues.

“(1)Whether the petitioner received injuries in a motor vehicle accident that occurred on 11.10.2001 at 6.30 p.m., due to rash and negligent driving of the driver of RTC hire bus bearing No.AP-04-T-9225?

2. Whether the petitioner is entitled for compensation and if so, to what amount and from whom?

3. To what relief?”

8. In order to decide the controversy, during enquiry, the first petitioner examined herself as P.W.1 besides examining the doctor, as P.W.2 and marked Exs.A1 to A7. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

9. The Tribunal, on appraisal of evidence of P.W.1 supported by the documentary evidence, Exs.A1 and A3, which are certified copies of FIR and charge sheet showing that the driver of the RTC bus was arrayed as an accused, found issue No.1 in favour of the petitioner. On issue No.2, the Tribunal infact discussed the contention raised by the learned counsel for the second respondent as to the liability of the Corporation referring to clause 5(iv) of the agreement, marked as Ex.B1 and interpreting the said clause holding that the Corporation cannot be fastened with the liability as it cannot be considered as owner and thereby, ordered the first and second respondents to pay the compensation by fastening joint and several liability on the first and second respondents. The Tribunal granted 7.5% interest per annum and awarded compensation of Rs.33,800/-.

10. It is the aforesaid order, which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal, some how, did not take note of the conditions of the policy in informing the accident by the owner and also as to hiring of the bus. It is also stated that the Tribunal overlooked the fact that the driver of the bus who drove the crime vehicle at the relevant time was performing duties under the order, command and control of the Corporation and thus, the Corporation-third respondent is liable to pay compensation. It is also stated that the Tribunal ought to have held that the third respondent is the owner of the crime vehicle by virtue of provisions of Section 2(30) of the Motor Vehicles Act, 1988 ("the Act" for brevity). Therefore, sought to set aside the order and decree passed against it.

11. Heard Smt. A.Malathi, learned counsel for the appellant and Sri K.Rathanga Pani Reddy, learned counsel for the first respondent-claimant. Despite service of notice on respondent Nos.2 and 3, none appears for them.

12. Perused the order and oral and documentary evidence let in by the rival parties. The main ground agitated in the instant appeal is that by virtue of hire agreement-Ex.B1 and by the provisions of Section 2(30) of the Act, the third respondent has to be construed as owner and liability has to be fastened on the third respondent but not on the insurance company. A perusal of the written statement filed by the second respondent-insurance company, which is appellant herein, shows that no where factual foundation was laid by it touching the said aspect, which is now agitated in the grounds of appeal having noticed that the Tribunal discussed the same in answering the rival contentions during the course of arguments of O.P. Viewed in that perspective, certainly, the appellant is debarred from agitating the said ground. Even otherwise, in view of the decision of a 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** as 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* (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.”

In view of the above decision, the insurance company cannot absolve from its liability to pay compensation, as ordered by the Tribunal.

13. Thus, it is clear that at the relevant time, though, the bus was in possession and control of the 3rd respondent - APSRTC, still, the appellant, being the insurer of the same, the liability fastened on the appellant by the Tribunal cannot be faulted with. Thus, there is no merit in the appeal.

14. Accordingly, the appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

1st April 2015.

RRB