

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.3418 of 2014

JUDGMENT:

1 This appeal is filed under Section 173 of the M.V.Act assailing the judgment and award dated 25.11.2013 passed in M.V.O.P.No.608 of 2012 on the file of the Motor Accidents Claims Tribunal – cum - VI Additional District Judge, (III-FTC) Warangal at Mahabubabad wherein and whereby an amount of Rs.2,60,000/- was awarded as compensation as against the claim of Rs.4.00 lakhs, the 3rd respondent – insurance company has preferred the present appeal.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 08.02.2012 at about 10.00 AM, Maloth Arun, who was aged about 4 years, was playing in front of his house. In the meanwhile, the driver of an RTC bus bearing No.AP 36 X 5628 drove the same in a rash and negligent manner and dashed Arun. Due to the accident Arun (hereinafter referred to as 'the deceased') died on the spot. In connection with the said accident, the Station House Officer, Nekkonda Police Station registered a case in Cr.No.26 of 2012 for the offence punishable under Section 304-A of IPC against the driver of the RTC bus. As on the date of accident, the bus which belongs to the second respondent

was insured with the third respondent - insurance company and that the fourth respondent hired the said bus. Hence all the respondents are jointly and severally liable to pay compensation to the petitioners. Hence the petitioners filed the petition seeking compensation of Rs.4.00 lakhs from all the respondents.

5 First respondent remained *ex parte*. Second Respondent filed counter denying the material averments made in the petition inter alia stating that as on the date of accident the bus bearing No.AP 36 X 5628 was insured with the third respondent and that the fourth respondent hired the said bus. Therefore, the respondent Nos.3 and 4 alone are liable to pay compensation to the petitioners. Hence the petition may be dismissed against this respondent.

6 Third respondent filed counter denying the material averments made in the petition. It is stated that it is the duty of the petitioner to prove that the driver of the bus was having valid and effective driving licence as on the date of accident. The bus was under the control of fourth respondent, therefore, the fourth respondent alone is liable to pay compensation, if any, to the petitioners. Hence the petition may be dismissed.

7 Fourth respondent filed counter denying the material averments made in the petition including the manner of accident stating that as on the date of accident the RTC bus bearing No.AP 36 X 5628 was insured with the third

respondent and hence the third respondent alone is liable to pay compensation, if any, to the petitioners. As per clause 5 (iv) of the agreement of hire, the insurer is liable to pay compensation, if any claim arises due to accident and compensation is payable under the provisions of the M.V. Act. The driver on wheels was also under the control of the second respondent and he is not employee of the fourth respondent. Hence the petition may be dismissed.

8 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident occurred due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP 36 X 5628?
- ii. Whether the driver of the APSRTC hired bus bearing No.AP.36X-5628 had valid and effective driving licence to drive the vehicle at the time of accident?
- iii. Whether the APSRTC hired bus bearing No.AP 36 X 5628 was insured with the third respondent? Whether the policy was in force at the time of accident?
- iv. Whether the petitioners are entitled for compensation, if so for what amount and from whom of the respondents?
- v. To what relief?

9 During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents R.Ws.1 and 2 were examined and Exs.B.1 to B.3 were marked.

10 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at

a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 36 X 5628 which resulted in the death of the deceased and allowed the petition in part by awarding an amount of Rs.2,60,000/- as compensation and by fastening the liability on respondent Nos.2 and 3. The petition against respondent Nos.1 and 4 was dismissed. Feeling aggrieved by the judgment and award of the Tribunal, the 2nd respondent preferred the present appeal.

11 The contention of the learned counsel for the 2nd respondent is that the Tribunal committed error in fastening the liability on the respondent Nos.2 and 3 while exonerating the respondent Nos.1 and 4. He further submitted that since by the date of accident the driver was under the control of the fourth respondent, therefore, the fourth respondent alone has to pay the compensation to the petitioners.

12 *Per contra*, the learned counsel for the fourth respondent submitted that the Tribunal has rightly considered various aspects and fastened the liability on the respondent Nos.2 and 3. He further submitted that the RTC bus bearing No.AP 36 X 5628 which belongs to the second respondent was validly insured with the third respondent as on the date of accident and hence the third respondent - insurance company alone is liable to pay compensation to the petitioners.

13 Heard the learned counsel for the

claimants/petitioners.

14 Now the point that falls for consideration in this appeal is:

“Whether the Tribunal is justified in fastening the liability on respondent Nos.2 and 3 only by exonerating the respondent Nos.1 and 4?”

Point:

15 Basing on the oral testimony of P.Ws.2 and 3 and Exs.A.1 to A.4 the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of RTC bus bearing No.AP 36 X 5628, which resulted into the death of the deceased. First respondent who is the driver of the offending bus did not choose to file any appeal challenging the finding of the Tribunal on issue No.1. Therefore, the finding of the Tribunal on issue No.1 has become final so far as the respondent No.1 is concerned. The Tribunal has assigned cogent and valid reasons while arriving at the conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 36 X 5628, which resulted into the death of the deceased. There are no grounds much less valid grounds to interfere with the finding of the Tribunal on issue No.1.

16 The petitioners did not choose to file appeal challenging the quantum of compensation awarded by the Tribunal. It is a case of child death. After considering the material available on record, the Tribunal has awarded an amount of Rs.2,60,000/- towards compensation. Viewed

from any angle, the Tribunal has awarded just and reasonable compensation. Hence there is no need to delve into that aspect elaborately in this appeal.

17 It is an admitted fact that the RTC bus bearing No.AP 36 X 5628 which belongs to the second respondent was insured with the third respondent under Ex.B.1 policy. Ex.B.1 was in force as on the date of accident. Second respondent entered into hire agreement with the fourth respondent. The material available on record clinchingly establishes that the bus was hired with the fourth respondent as on the date of accident. As per Clause 5(iv) of the said agreement, the insurance company alone is liable to pay compensation to the victims of the road accident or legal representatives of the deceased.

18 Now the crucial point is which of the respondents has to pay the compensation to the petitioners.

19 The learned counsel for the respondent No.4 has drawn my attention to the Full Bench decision of this court in

APSRTC v B.Kanakaratnabai^[1]. In para 90, it was held as follows:

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 v Yaseen Fatima, 1986 ACJ 1 : AIR 1986 AP 62 (FB) which was approved and upheld by the Supreme Court in G. Govindan v New India Assurance Co. Ltd., 1999 ACJ 781 (SC) : (1999) 3 SCC 754 and applied thereafter in Rikhi Ram v Sukhrania, AIR 2003 SC 1446 : (2003) 3 SCC 97 : 2003 ACJ 534. We answer the question referred to us for decision accordingly.

20 The facts of the case on hand are identical to the facts of the case cited supra. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the finding of the Tribunal that the respondent Nos.2 and 3 alone are liable to pay compensation is legally sustainable.

21 As observed earlier, the bus belongs to the second respondent was insured with the third respondent under Ex.B1 Policy as on the date of accident. Absolutely there is no material on record to establish that the second respondent had violated the terms and conditions of the policy so as to absolve the liability of the third respondent. The second respondent being the owner of the bus is vicariously liable for the wrongful acts done by his driver in course of his employment. The third respondent has to indemnify the liability of the second respondent in view of the terms and conditions of Ex.B1 policy. Therefore, the respondent Nos.2 and 3 are jointly and severally liable to pay compensation to the petitioners. The petition against the respondent Nos.1 and 4 is liable to be dismissed. The Tribunal has rightly fastened the liability on respondent

Nos.2 and 3, by exonerating the liability on the respondent Nos.1 and 4. Therefore, the said finding of the Tribunal needs no interference. Accordingly, the point is answered.

22 In the result, the appeal is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 4th August, 2015
Kvsn

[\[1\]](#) 2013 ACJ 1593 = 2013(1) ALT 727