

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A.C.M.A. No.956 OF 2005

JUDGMENT:

The instant appeal is preferred by the 2nd respondent – M/s United India Insurance Company Limited, aggrieved of the order and decree, dated 20-12-2004, in O.P. No.2329 of 2001, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – XXI Additional Chief Judge – cum – Additional Metropolitan Sessions Judge for the Trial of Communal Offence Cases, Hyderabad (for short 'the Tribunal'), whereby and where-under, a sum of Rs.1,02,000/- (Rupees one lakh and two thousand) was awarded as compensation with interest at 9% per annum as against the claim of Rs.1,50,000/-(Rupees one lakh and fifty thousand) laid under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') towards damages to the vehicle which are quantified thus:

"a) Loss of earnings for a period of 3 months	- Rs. 30,000/- (10,000/- per month x 3 months)
b) Transportation charges of vehicle to garage	- Rs. 2,000/-
c) Damages to vehicle including surveyor charges	- Rs. 70,000/-
	----- Rs.1,02,000/- -----"

2. The appellant herein is respondent No.2, who is insurer of bus bearing registration No.AP 9V 8520, in the O.P. before the

Tribunal, while respondent No.1 is petitioner, respondent No.2, who is owner of the bus, is respondent No.1 and respondent Nos.3 and 4 – Andhra Pradesh State Road Transport Corporation (APSRTC), which took the bus on hire, are respondent Nos.3 and 4, respectively.

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

4. The facts, in brief, are that on 01-09-2000, the petitioner sent his Canter Van bearing registration No.AP 9U 8136, a transport vehicle, for collecting leftovers and waste from Yatri Nivas Hotel at Begumpet, and having duly loaded, it was proceeding towards Yaprul and at about 9.00 A.M., when it reached near Alwal Bridge, a bus bearing registration No.AP 9V 8520 driven by its driver in a rash and negligent manner at high speed coming in opposite direction, dashed the said van, causing extensive damage to it and injuries to the driver of bus and other passengers. The Station House Officer, Bolaram Police Station, Secunderabad, also registered a case in crime No.55 of 2001 against the driver of the bus under Section 337 IPC.

i) The petitioner claims that the van was kept in garage for about 10 months, without any work, for undertaking repairs. He claims that he spent huge amount and, therefore, sought to grant a sum of Rs.1,80,000/- (should be Rs.1,50,000/-) against respondent Nos.1 and 2, owner and insurer of the bus, and respondent Nos.3 and 4 – APSRTC, which took the bus on hire, seeking joint and several liability against them.

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

6. Respondent No.2 – Insurance Company opposed the claim, raising various pleas.

7. Respondent Nos.3 and 4 filed a common counter. They too, opposed the claim, contending that the petition is not maintainable against them for the reason that the bus was hired under Hire Agreement and, therefore, respondent Nos.1 and 2 alone are responsible for compensating the petitioner.

8. Based on the pleadings, the Tribunal framed three issues about fixing responsibility for the accident. During inquiry, on behalf of the petitioner, PWs.1 to 3 were examined and marked Exs.A-1 to A-11. On behalf of the 2nd respondent, copy of insurance policy was marked as Ex.B-1 on consent.

9. The Tribunal, on issue No.1, having analytically assessed the evidence on record, held it in favour of the petitioner and against the respondents. On issue No.2, taking into consideration the contents of Ex.B-1, copy of insurance policy, and finding that the 2nd respondent collected additional sum of Rs.75/-, creating unlimited liability on the insurer for damage to the vehicle and placing reliance on the judgments of other High Courts, and elaborately discussing the terms and conditions of hire agreement and also placing reliance on the judgments of this Court referred to in paragraph Nos.13 and 14 at page No.19 of the order under challenge, held that respondent Nos.1 to 4 are jointly and severally liable to compensate the petitioner. As regards

quantum of compensation, referring to the contents of Ex.A-6 and other evidence on record, granted a sum of Rs.1,02,000/- towards damage caused to the vehicle, more particularly, taking into consideration the evidence of PWs.1 to 3, directed the respondents to pay the said amount with interest at 9% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal by the 2nd respondent – Insurance Company, contending in the grounds of appeal that since the bus was hired to APSRTC, the owner and APSRTC are vicariously liable to the acts done by the employees and in that view of the matter, to exonerate the Insurance Company. It is also stated that as per the provisions of Section 2(30) of the Act, the Corporation is the hirer/owner and when the bus was in its possession, the accident had occurred and, therefore, the Corporation is liable to pay compensation. The Insurance Company also placed reliance on the decision of Hon'ble Supreme Court in **Rajasthan State Road Transport Corporation v. Kailash Nath Kothari and other etc.**^[1], contending that the Tribunal, somehow, over-looked to follow the principles laid down by the Hon'ble Supreme Court and, therefore, sought to exonerate it and to fasten liability on respondent Nos.3 and 4.

11. Heard Smt. A. Malathi, learned Standing Counsel for the appellant – Insurance Company, and Sri V. Atchuta Ram, learned counsel for respondent No.1 – petitioner and Sri N. Vasudeva Reddy, learned Standing Counsel for APSRTC – Respondent Nos.3 and 4. Despite service of notice on respondent No.2, owner of the vehicle, none appears for him.

12. When the matter is taken up for arguments, the learned counsel for the appellant fairly concedes that the law, now, laid down by a Three-Judge Bench of this Court in **APSRTC, rep. by its General Manager (now re-designated as Managing Director), Musheerabad, Hyderabad and Others v. B. Kanaka Ratnabai and Others**^[2], is against the Insurance Company, in instances like one occurring in the instant case, and also fairly concedes that there is no merit in the appeal, but, however, requests to reduce the interest in view of the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**^[3]. Hence, there is absolutely no need to probe further into the controversy in the instant appeal. Therefore, the appeal is allowed only to the extent of reduction of interest from 9% per annum to 7.5% per annum. In all other respects, the order of the Tribunal is confirmed.

13. Thus, the appeal is allowed in part, as indicated in the above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 06, 2015.

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- [\[1\]](#). 1997 ACJ 1148 (SC)
- [\[2\]](#). 2013 ACJ 1593
- [\[3\]](#). 2013 ACJ 1403