HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.275 of 2009

JUDGMENT:

Challenging the Award dated 04.02.2008 in M.V.O.P.No.810 of 2005 passed by the Chairman, M.A.C.T-cum-I Additional District Judge, West Godavari District at Eluru (for short 'Tribunal'), the 3rd respondent in OP/ the New India Assurance Company Limited, preferred the instant MACMA.

2) On factual side, on 3.5.2005 at about 2.30 PM, the deceased by name Modhugu Gurrayya while proceeding from Puttalagutlagudem to Jangareddygudem on his Hero Majestic Moped bearing NO. AP 5 Q 9800 reached near Kongala Tank in the outskirts of Puttalagutlagudem Village and at that time, the driver of A.P.S.R.T.C bearing No. AP 37 W 1513, which was coming from opposite side i.e., from Jangareddygudem to Dwaraka Tirumala drove in a rash and negligent manner, last control over the vehicle and dashed against the vehicle of the deceased, as a result, the deceased fell down on the road and died on the spot. On these pleas, the claimants filed M.V.O.P.No.810 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short "MV Act") against respondent Nos. 1 to 4, who are the driver, owner, insurer of the offending vehicle and Regional Manager of A.P.S.R.T.C and claimed Rs.8,00,000/- as compensation.

b) Respondent Nos.1 and 2 remained *ex parte*.

c) Respondent No.3/Insurance Company filed counter denying all the material averments and urged to put the claimants in strict proof. R.3 further contended that at the time of accident, the A.P.S.R.T.C., represented by its Regional Manager, Eluru was in possession of the bus and therefore, APSRTC is liable to pay the compensation. R.3 further contended that due to negligence of the deceased only the accident was occurred that the drivers of both vehicles had no driving license and sought dismissal of claim.

d) Respondent No.4/APSRTC represented by its Regional Manager filed counter denying all material allegations and contended that the offending bus was taken hire from 2nd respondent and as per the agreement between the 2nd respondent and 4th respondent, the owner of the bus shall be liable for all claims that may arise due to statutory violations out of the operations like claim due to accidents payable under the provisions of M.V.Act, 1988 and the said agreement was in vogue from 21.05.2005 to 20.05.2007 and hence, the 3rd respondent is solely liable to pay the compensation to the claimants and prayed to dismiss the petition against it.

e) During trial, PWs.1 and 2 were examined and Exs.A.1 to 4 were marked on behalf of the claimants. RWs.1 and 2 were examined and Exs.B1 to B3 were marked on behalf of respondents and EXs. X.1 and X.2 were marked through Court.

f) The Tribunal on appreciation of oral and documentary evidence, awarded a total sum of Rs.4,35,240/- with proportionate costs and interest @ 7% p.a. under different heads as follows against respondents 1 to 3 and dismissed claim against R4.

For loss of dependency	Rs.	3,96,240/-
For loss of consortium	Rs.	15,000/-
For loss of love and affection	Rs.	20,000/-
Transportation of dead body	Rs.	02,000/-
Funeral Expenses	Rs.	02,000/-
	Rs.	4,35,240/-

Hence, the appeal by the Insurance Company.

3) The parties in the appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri Kota Subba Rao, learned Counsel for appellant/Insurance Company; Sri K. Ramesh Babu, learned counsel for respondents Nos.1 to 5/claimants and Sri K.Madhava Reddy, learned counsel for R8/APSRTC. Notice sent to R6/driver was returned unserved. Notice sent to R7 was served but no representation on his behalf, hence treated as heard.

5) Challenging the award insofar as fixing liability on the Insurance Company, Sri Kota Subba Rao, learned Counsel

for appellant/Insurance company vehemently argued that the crime bus was hired by APSRTC and it was in its possession and control and driver was also working at its behest as on the date of accident and as such APSRTC can be termed as '*owner*' within the meaning of Section 2(30) of MV Act and therefore, it has to bear the liability but not the Insurance Company. He submitted that in similar circumstances, the Apex Court in a decision reported in ***Purnya Kala Devi vs. State of Assam and another***[1] treated the Government of Assam who was the hirer of the crime vehicle as owner of the vehicle and fastened liability on it. He thus submitted that in the instant case the Tribunal erred in holding that despite hiring vehicle the liability of Insurance Company will not be seized. He thus prayed to allow the appeal.

6) Per contra, learned counsel for respondents 1 to 5/claimants and learned counsel for R8/APSRTC have argued that as per Ex.B1—policy, the Insurance Company undertook the risk of third parties and the policy was in force by the date of accident and further there was no stipulation in the policy restraining the owner from hiring his vehicle and thereby the Insurance Company cannot repudiate its liability merely because the vehicle was under hire with the APSRTC. The Tribunal rightly negatived its contention in this regard and therefore, the appeal may be dismissed.

7) In the light of above rival arguments, the point for determination is:

"Whether the award passed by the Tribunal fastening liability on the appellant/Insurance Company is sustainable?"

8 a) **POINT**: Accident, involvement of APSRTC hired bus bearing No. AP 37 W 1513 and death of deceased are admitted facts. The legal point raised by the appellant/Insurance Company on its liability is no more *res integra*. A Full Bench of this High Court in its judgment in ***Andhra Pradesh State Road Transport Corporation vs. B.Kanakaratnabai***[2] has resolved the same question. The Full Bench after referring various decisions of the Supreme Court and this High Court ultimately held thus:

> *(Para No.88)*
> *"On principle, it is not open to the insurance companies to absolve themselves of liability towards passengers/third party risks on the short ground that the insured vehicle has been given on hire without following the prescribed procedure. This Court in Madineni Kondaiah, (1986 ACJ 1 (AP)), has already held that even transfer of ownership of an insured vehicle without following the due procedure would not absolve the insurance company of liability towards third party risks. Mere transfer of possession, through hire of the vehicle, cannot stand on a worse footing or exempt the insurance companies from liability in this regard."*
>
> *xxxxxxx*
>
> *(Para No.90)*
> *"On the above analysis, we hold that mere hiring of*

insured buses by the owners to 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 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 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 Maddineni Kondaiah, 1986 ACJ 1 (AP), which was approved and upheld by the Supreme Court in G.Govindan, 1999 ACJ 781 (SC), and applied thereafter in Rikhi Ram, 2003 ACJ 534 (SC)."

b) Thus, it is needless to emphasise that the above decision squarely applies to the case on hand. The appellant/Insurance Company has not brought on record that Ex.B1—policy prohibits the owner from leasing out the bus to third parties. Hence, the owner was well within his right to hire the bus to APSRTC. Ex.B1 clearly shows that the Insurance Company covenanted the liability of third parties. So, in view of the Full Bench decision and Ex.B1—policy covering the risk of the third parties and hiring is not expressly barred, the Insurance Company cannot absolve its liability on the pretext that bus was under hire of APSRTC by the date of accident.

c) I have gone through ***Purnya Kala Devi***'s case (1 supra) cited by the Insurance Company. It must be said that the said decision will not come to the aid of the Insurance Company. The facts of the said care are that one Md. Abdul Salam was the registered owner of a bus and it was requisitioned by the State of Assam on some Government duty on 14.02.1993. Whileso on 16.02.1993 at about 10:30 am, when the said vehicle was taken out of police station campus, the driver on the way dashed a cyclist who died ultimately. The vehicle was not covered with any insurance policy. The LRs of the deceased filed claim petition against both the registered owner and State of Assam. The registered owner contended that since the vehicle at the time of accident was under the requisition of the State Government, it had to pay compensation. The State took a converse plea that it only requisitioned the vehicle and it was not the owner under the provisions of the Assam Requisition and Control of Vehicles Act, 1968 (for short 'Assam Act') and in fact it released the vehicle even before the accident. The lower Tribunal directed the registered owner to pay compensation. On appeal by the claimants, the High Court of Gauhati enhanced the compensation but held that State Government was not liable as it was not the owner. On appeal, Hon'ble Apex Court by referring Section 2(30) of the M.V. Act which defined the term "owner" held that since the vehicle was not released by the State Government by serving notice in writing on the owner as per Section 5(1) of the Assam Act, the State can be squarely covered under the definition of owner as contained in Section 2(30) of the M.V. Act. Ultimately, Apex Court fastened the liability on the State of Assam.

d) Even if the ratio of above decision is applied to the present case, at best APSRTC can also be regarded as '*owner*' under Section 2(30) of MV Act. However, by that count alone the liability of Insurance Company will not be seized since it undertook the risk of third parties under Ex.B1—policy. So, irrespective of whether 2nd respondent in the OP or the APSRTC—the hirer is the owner of the crime bus, the Insurance Company shall indemnify the liability of both i.e. the registered owner and deemed owner i.e. APSRTC. For these reasons the argument of Insurance Company cannot be countenanced.

9) In the result, this MACMA is dismissed confirming the award passed by the Tribunal in MVOP No.810 of 2005.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 24.03.2015

Note: L.R. Copy to be marked: Yes / No

eha/Murthy

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[1] 2014 (1) Decisions Today (SC) 122 = 2014 ACJ 1269 (SC)

[2] 2013 ACJ 1593 (AP)