HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.1737 of 2006

JUDGMENT:

The New India Assurance Company Limited, who is respondent No.2 in M.V.O.P.No.42 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Cuddapah (for short, 'the Tribunal'), is the present appellant. Aggrieved by the order dated 23.08.2005, whereby and whereunder, a sum of Rs.2,22,000/- was granted as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Edidhodi Ramachandran in a road accident, the instant appeal is preferred Insurance Company contending that the Tribunal ought not to have fastened liability on it, since the bus belonging to 1st respondent, Smt. B.Leelavathamma, was hired to the 3rd respondent-Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') under a hire agreement as per Ex.B.3 and by virtue of the definition of Section 2(3) of the Act.

2. Respondent Nos.1 to 4 herein are the petitioners, while respondent No.5, appellant and respondent No.6 herein, who are the owner, insurer and hirer of the bus bearing registration No.TN 23U 9199 respectively, were the respondents in the original petition.

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

4. The facts in brief are that on 20.12.2001 at about 10-30 a.m., the said Ramachandran along with his brother was proceeding from Court canteen to go to tea shop at RTC bus stand, and when the deceased was crossing the cement slabs in the middle of the road, a bus bearing registration No.TN 23U 9199 coming from his behind, driven in a rash and negligent manner at high speed without hooting horn, hit him, as a result, he fell down and rear tyres of the bus ran over him, causing his instant death. The petitioners claim that the deceased was working as a cook in the Court canteen, Cuddapah, earning Rs.4,000/- per month and that they lost their bread earner, and, therefore, sought a sum of Rs.4,00,000/- as compensation

against the respondent Nos.1 to 3, who are the owner, its insurer (the present appellant) and the Managing Director of the Corporation.

5. Before the Tribunal, 1st respondent remained *ex parte*. Respondent No.2 opposed the claim raising various pleas. The specific plea being that at the relevant time, the bus was hired to 3rd respondent-Corporation without its notice, and, therefore, sought to exonerate it, besides contending that the claim is excessive. Respondent No.3-Corporation also opposed the claim contending that as per the terms of the hire agreement, the 1st respondent shall keep his vehicle duly insured comprehensively to cover third party risk, and, therefore, sought to exonerate it from its liability.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

> "1. Whether the accident occurred due to rash and negligent driving of the bus, bearing No.TN 23U 9199 by its driver?
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> 2. Whether the petitioners are entitled for compensation, and if so, to what amount, and from whom?
>
> 3. To what relief?"

7. During enquiry, the 4th petitioner examined herself as P.W.1 besides examining one E.Mani, an eyewitness to the occurrence, as P.W.2 and marked Exs.A.1 to A.4; whereas, on behalf of the contesting respondents, R.Ws.1 and 2 were examined and Exs.B.1 to B.3 were marked.

8. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioners finding that due to rash and negligent driving of the driver of the bus, the accident had occurred causing death of the deceased. On issue No.2, the Tribunal fixed the income of the deceased at Rs.1,500/- per month notionally, since no evidence was let in to substantiate the stand of the petitioners that the deceased was earning Rs.4,500/- per month. The Tribunal deducted 1/3rd therefrom towards his personal expenses and taken the reminder as contribution to the family, applied multiplier ‘16’ and arrived at Rs.1,92,000/- (Rs.1,000/- per month x 12 months x ‘16’) towards loss of dependency. Besides the same, the Tribunal has granted Rs.15,000/- towards loss

of estate and Rs.15,000/- towards loss consortium, and, thus, granted a total sum of Rs.2,22,000/- with interest at 9% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal by the 2nd respondent-Insurance Company mainly contending in the grounds of appeal that the Tribunal ought to have exonerated it from its liability as the bus was hired to the 3rd respondent-Corporation.

10. Heard Smt. A.Jayanthi, learned Standing Counsel for the appellant-Insurance Company, Sri K.Ratangapani Reddy, learned counsel for the respondent Nos.1 to 4 herein, who are the claimants, and Sri A.Rama Rao, learned Standing Counsel for respondent No.6 herein, who is the Corporation. Despite service of notice, none appears for respondent No.5 herein, who is owner of the bus.

11. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by both sides. Since the 3rd respondent-Corporation has not preferred any appeal challenging the order to exonerate its liability, to the extent of liability fixed on the respondent Nos.1 and 3, who are owner and the Corporation, has to be maintained. Concerning the appellant herein (2nd respondent in the O.P.), the main submissions are that the Tribunal applied multiplier '16', though, the deceased was 40 years, as against the multiplier '10'. The second submission is that since the vehicle was hired to the Corporation without the notice of the Insurance Company, it (Insurance Company) cannot be made liable to pay the compensation. It is also submitted that the 3rd respondent-Corporation acknowledged 50% liability in the letter dated 27.09.2005 addressed to the 1st respondent-owner, and, therefore, sought to set aside the order and decree so far as the Insurance Company is concerned.

12. So far as determination of compensation is concerned, the Tribunal, in fact, fixed the monthly earnings notionally at Rs.1,500/-, though, it is an admitted fact that the deceased was working as a cook in the Court canteen at Cuddapah, and claimed Rs.4,500/- as monthly earnings, which itself is on lower side. It is no doubt true, the age of the deceased was taken as 40 years and multiplier '16' was applied, though, relevant multiplier is '15' as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**. But the petitioners are numbering four as dependents, and, therefore, as per the very same decision,

1/4th has to be taken towards personal expenses as against 1/3rd deducted by the Tribunal. In such an event, certainly, the determination of compensation by the Tribunal cannot be faulted with, and, thus, there is no merit in the said ground agitated by the Insurance Company.

13. Turning to the second ground, since without the notice of the 2nd respondent-Insurance Company, the bus was hired to the Corporation. Learned counsel for the Insurance Company also relied on a decision of the Hon'ble Apex Court in **Purnya Kala Devi v. State of Assam and another** contending that the liability was thrust on the State when the vehicle was taken by the State at its requisition and since relieving order as required by the provisions of Section 5(1) of the Assam Requisition and Control of Vehicles Act, 1968, was not communicated, the liability was fastened on the State. The facts therein would show that the bus was not insured and was under requisition of the State at the relevant time. Therefore, the said decision is of any assistance to advance the case of the 2nd respondent-Insurance Company, the appellant herein.

14. In the present context, it is profitable to refer to the decision of the Hon'ble Supreme Court in **K.Matura Bai and others v. A.Shiva Nageswar Rao and others**. In paragraph-21, while observing thus:

> "21. As regards the liability of the Insurer, as discussed hereinabove, the policy of Insurance was in vogue at the relevant time regardless of the fact that the owner of the vehicle is liable or the Corporation is liable, and in view of the policy covering the offending vehicle, the Insurer cannot escape its liability. The problem can be examined in another view also. The Apex Court in *Rikhi Ram v. Sukhrania,* 2003(2) ALD 71 (SC) = (2003)3 SCC 97, held that the liability of the Insurer would not cease even if the owner or the purchaser did not give any intimation of transfer of the vehicle to the Insurer. The above view was taken by the Apex Court having regard to Section 94 of the old Act according to which once the vehicle was insured, besides the owner other person could also use the vehicle with the consent of the owner and Section 94 did not require that the other person who will use the vehicle should also insure the vehicle in respect of his separate use. Section 146 of the new Act is akin to Section 94 of the old Act. In view of the above authoritative pronouncement of the Apex Court, although the vehicle was insured with the Insurer by the owner of the vehicle but the vehicle has been used with the consent of the owner by the Corporation it does not require the vehicle to be insured once again by the Corporation and the original policy under which the vehicle has been covered which runs with the vehicle is still enforceable notwithstanding the fact that the Insurer has not been informed

> of the same by the owner or the Corporation, as the case may be. In any view of the matter, the liability of the Insurer will not cease in view of the transfer. But, here is a case where there has been no sale of the vehicle but it is only a contract of hire. For the above reasons, I am of the considered view that the Corporation is vicariously liable for the rash and negligent driving of the driver of the offending vehicle and the Insurer is liable to indemnify the owner as per the terms of the policy under which the vehicle has been covered."

held that the insurer is also liable to indemnify the owner of the vehicle. Thus, when viewed in the light of the judgment in **Matura Bai's** case (3 supra), absolutely there is no merit in the second submission even. Hence, the instant appeal is without any merit.

15. Consequently, the instant appeal is dismissed confirming the order and decree passed by the Tribunal in all respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

26th March, 2015

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