

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

C.M.A.No.3282 of 2002

JUDGMENT:

1 Assailing the judgment and award dated 29.01.2002 passed in O.P.No.1382 of 1999 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad wherein and whereby an amount of Rs.3.00 lakhs was awarded as compensation as against the claim of Rs.3.00 lakhs, the respondent Nos.3 and 4 have 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 petition, briefly, are as follows:

4 On 11.06.1999 the petitioner boarded the bus bearing No.AP 36 U 3420 at Karimnagar to go to Hyderabad. When the bus reached near labour colony huts on Rajiv Rahadari road near Karimnagar, the driver of the bus drove the same in a rash and negligent manner and dashed against a lorry bearing No.AP 1 T 8577 which was coming in opposite direction. In the said accident, the petitioner sustained injuries on various parts of the body and took treatment as inpatient for long time in Osmania General hospital, Hyderabad. The right hand of the petitioner was amputated up to shoulder. By the time of accident, the petitioner was aged about 30 years and used to earn Rs.3,000/- p.m. Due to the amputation of the right hand, the

petitioner lost her income. The bus bearing No.AP 36 U 3420, which belongs to the first respondent, was validly insured with the 2nd respondent company, by the date of accident and hence all the respondents are jointly and severally liable to pay compensation to the petitioner. Hence the petitioner filed the petition seeking compensation of Rs.3.00 lakhs from all the respondents.

5 First respondent remained *ex parte*. Second Respondent filed counter denying the material averments made in the petition including the manner of accident and the injuries sustained by the petitioner. As per the terms and conditions of the hire agreement, the first respondent alone is liable to pay compensation, if any, to the petitioner. By the time of accident, the bus was under the control of the respondent Nos.3 and 4 and hence the APSRTC alone is liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

6 Respondent Nos.3 and 4 filed written statement denying the material averments made in the petition. It is contended that the first respondent is the registered owner of the bus bearing No.AP 36 U 3420, which was insured with the second respondent by the date of accident and hence the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Hence the petition may

be dismissed against these respondents.

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

- i. Whether the accident occurred out of the use of the motor vehicle of respondent No.1?
- ii. Whether the petitioner is entitled for compensation? If so, to what amount and from which of the respondents?
- iii. To what relief?

8 During the course of trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.10 were marked. On behalf of the respondents no oral evidence was let in. But Exs.B.1 and B.2 were marked.

9 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 bus bearing No.AP 36 U 3420 which resulted injuries to the petitioner and allowed the petition in toto by awarding an amount of Rs.3.00 lakhs as compensation and by fastening the liability on respondent Nos.3 and 4. Feeling aggrieved by the judgment and award of the Tribunal, the respondent Nos.3 and 4 have preferred the present appeal.

9 The contention of the learned counsel for the respondent Nos.3 and 4 is that the finding of the Tribunal that the respondent Nos.3 and 4 alone are liable to pay compensation to the petitioner is not sustainable either on

facts or on law. He further submitted that the respondent Nos.1 and 2 alone are jointly and severally liable to pay the compensation to the petitioner.

10 *Per contra*, the learned counsel for the petitioner submitted that the insurance company alone is liable to pay compensation to the petitioner.

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

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

Point.

12 As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the bus bearing No.AP 36 U 3420, which resulted injuries to the petitioner. Respondent Nos.1 and 2 did not file 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 Nos.1 and 2 are 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 bus bearing No.AP 36 U 3420, which resulted injuries to the petitioner. There are no grounds much less valid grounds to interfere with the finding of the Tribunal on issue No.1.

13 There is no much dispute between the parties with regard to the quantum of compensation awarded by the

Tribunal. Hence there is no need to delve into that aspect elaborately in this appeal.

14 By the time of accident, the bus bearing No.AP 36 U 3420 which belongs to the first respondent was insured with the 2nd respondent with effect from 08.04.1999 to 07.04.2000 under Ex.B.1 policy. A perusal of the recitals of Ex.B.2 – Hire Agreement clearly reveals that the said bus was hired with the APSRTC.

15 Now the crucial point is which of the respondents has to pay the compensation to the petitioner.

16 The learned counsel for the respondent Nos.3 and 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.

17 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.3 and 4 alone are liable to pay compensation is not legally sustainable.

18 As observed earlier, the bus belongs to the first respondent was insured with the second respondent under Ex.B1 Policy with effect from 08.04.1999 to 07.04.2000. Absolutely there is no material on record to establish that the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent. The first respondent being the owner of the bus is vicariously liable for the wrongful acts done by his driver in course of his employment. The second respondent has to indemnify the liability of the first respondent in view of the terms and conditions of Ex.B1 policy. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. The petition against the respondent Nos.3 and 4 - APSRTC is liable to be dismissed. The Tribunal has committed error, while fastening the liability on respondent Nos.3 and 4 - APSRTC, by exonerating the liability on the respondent Nos.1 and 2. The said finding of the Tribunal is liable to be set aside. Accordingly, the point is answered.

19 At the time of arguments, learned counsel for the respondent Nos.3 and 4 - APSRTC submitted that while

granting interim stay, on 19.11.2002, this court directed the respondent Nos.3 and 4 to deposit half of the decretal amount together with interest and costs awarded by the Tribunal. In compliance of the said direction, the respondent Nos.3 and 4 have deposited the said amount. If the claimant has already withdrawn the deposited amount, the respondent Nos.3 and 4 - APSRTC are at liberty to recover that amount from the respondent Nos.1 and 2 by following due process of law.

20 In the result, the appeal is allowed, exonerating the liability on the part of the respondent Nos.3 and 4 – APSRTC. The respondent Nos.1 and 2 shall jointly and severally pay the compensation of Rs.3,00,000/- (Rupees seven lakhs only) to the petitioner with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation. The respondent Nos.3 and 4 –APSRTC can recover the amount deposited by it as per the directions of this Court dated 19.11.2002, from the respondent Nos.1 and 2 by following due process of law. The judgment and award passed by the Tribunal are modified accordingly. There shall be no order as to costs in this appeal. 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