

**HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

M.A.C.M.A. No.1023 of 2009

JUDGMENT:

This appeal is filed by the insurance company challenging the judgment and award dated 11.7.2008 passed in O.P. No.196 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Mahabubnagar.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present appeal, in brief, are as follows: On 17.12.2003 when the petitioner was crossing the road at Miraspalli bus stage, the driver of A.P.S.R.T.C. bus bearing No.AP 22T 9339 had driven the same in a rash and negligent manner and dashed against the petitioner. The Station House Officer, Kothakota Police Station registered criminal case against the driver of the bus. Due to the accident, the petitioner sustained grievous injuries on various parts of the body. Immediately after the accident, the petitioner was shifted to Government General Hospital, Kurnool where he took treatment as inpatient till 05.1.2004. He spent huge amount towards treatment and medicines. The first respondent – A.P.S.R.T.C., took the bus on hire from the second respondent – owner of the bus, and the third respondent is the insurer of the bus. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioner with interest and costs.

4. The first respondent filed counter denying all the material averments made in the petition, *inter alia*, contending that there was no rashness or negligence on the part of the driver of the bus. The accident occurred due to negligence of the petitioner only. This respondent had taken the bus on hire basis from the second

respondent and as per the terms and conditions of the agreement the second respondent is liable to pay compensation to the petitioner. Hence, the petition is liable to be dismissed against this respondent.

5. The second respondent remained *ex parte*.

6. The third respondent filed counter denying all the material averments made in the petition, *inter alia*, contending that the driver of the bus was not having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition is liable to be dismissed against this respondent.

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

- 1) Whether the accident occurred on 17.12.2003 at Miraspally Bus Stage, due to rash and negligent driving of Bus No.AP 22T 9339 by its driver and whether it resulted in causing injuries to the petitioner?
- 2) Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
- 3) To what relief?

8. During the course of the trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A7, C1 and C2 were marked. On behalf of the third respondent, R.W.1 was examined and Exs.B1 and B2 were marked.

9. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to negligence on the part of the petitioner as well as the driver of the bus, in the ratio of 25% and 75% respective, and allowed the petition in part by awarding compensation of Rs.1,72,500/- with interest at 6% per annum, directing the respondent Nos.2 and 3 jointly and severally pay the compensation. The petition against the first respondent was dismissed. Feeling aggrieved by the

judgment and award, the third respondent–insurance company preferred the present appeal.

10. Heard Sri Kota Subba Rao, learned standing counsel for the appellant–insurance company, Sri V.Hanumantha Rao, learned counsel for the claimant, Sri N.Vasudeva Reddy, learned counsel for A.P.S.R.T.C., and Sri S.Ashok Anand Kumar, learned counsel for the owner of the bus.

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

*Whether the Tribunal has committed any error while fastening the liability on respondent Nos.2 and 3?*

**Point:**

12. As per the findings of the Tribunal, the accident occurred due to negligence of the petitioner as well as the driver of the bus in the ratio of 25% and 75% respectively. The first respondent – A.P.S.R.T.C., did not choose to file appeal challenging the finding of the Tribunal on issue No.1. At the time of arguments, learned counsel for the third respondent – insurance company submitted that the third respondent is not challenging the finding of the Tribunal with regard to fixing of negligence on the part of the driver of the bus and the petitioner in the ratio of 75% and 25% respectively. For one reason or the other, the claimant has not file appeal challenging the finding of the Tribunal on issue No.1. The finding recorded by the Tribunal on issue No.1 became final so far as negligence on the part of the driver of the bus and the petitioner is concerned. There are no grounds much less valid grounds to interfere with the said finding of the Tribunal on issue No.1.

13. It is an admitted fact that the bus bearing No.AP 22T 9339, which belongs to the second respondent, was insured with the third respondent as on the date of the accident. A perusal of Ex.B1 agreement reveals that A.P.S.R.T.C., has taken the bus in question on

hire basis from the second respondent. Ex.B1 agreement was in force as on the date of the accident. The Tribunal fastened the liability on respondent Nos.2 and 3 and dismissed the petition against the first respondent – A.P.S.R.T.C.

14. Now the crucial question that falls for consideration is whether A.P.S.R.T.C., is liable to pay compensation to the petitioner as contended by the third respondent – insurance company. The point raised by the learned counsel for the insurance company is no more *res integra* in view of the Full Bench decision of this court in **APSRTC v B.Kanakaratnabai**<sup>[1]</sup>. It is apposite to extract paras – 88 to 90, which read as follows:

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 v Yaseen Fatima*, AIR 1986 AP 62 (FB) has already held that even transfer of the 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.

89. The issue raised in the two writ petitions with regard to the validity of the action of the APSRTC in recovering the compensation amounts paid by it from the owners of the vehicles does not fall for consideration before us given the specific question referred to us for decision. We therefore decline to address this issue. The CMAs filed by the claimants for enhancement of the awarded compensation are also eschewed from consideration on the same count.

90. 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*, which was approved and upheld by the Supreme Court in *G.G.Govindan v New India Assurance Company Limited*, 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. All the matters shall be placed before the appropriate Courts for individual adjudication.

15. 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 Tribunal has not committed any error while fastening liability on respondent Nos.2 and 3 i.e., owner of the bus and the insurance company. Accordingly, the point is answered against the insurance company.

16. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

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**T.SUNIL CHOWDARY, J**

Date: 24.3.2015  
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<sup>[1]</sup> 2013 (1) ALT 727 (FB)