

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

M.A.C.M.A.No. 907 of 2009

Between:

Depot Manager, APSRTC, Armoor Depot,
Nizambad District and another Appellants

And

Kum.Gurrapu Swaroopa and others Respondents

DATE OF JUDGMENT PRONOUNCED: **03.08.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.907 of 2009

JUDGMENT:

The death has many ways to lay its cruel hands on the victims to take away their lives and the present case is one such instance as we see now. The deceased—Gurrapu Padma, a 35 years old widow and resident of Manala village, Kammarpalli Mandal, Nizambad District was eking out her livelihood by engaging in cooking and catering food and fending her two minor daughters and widowed mother-in-law. While so, the fate would have hit her that on 12.04.2007 at about 2.30 PM, a RTC bus bearing No.AP 10Z 3559 proceeding from Armour to Vemulavada via Manala village reached Manala bus stand and the bus driver halted the bus just beneath sagging electrical live wires. One passenger by name—Narasaiah who loaded his bicycle on the top of the bus in the previous station went to the top of the bus to bring down his cycle and while he was bringing down the cycle, the handle bar came into contact with 11 KV electric live wire and thereby he was electrocuted and fell down from the top of the bus. The unfortunate incident not ended there. At the very same time the deceased—Padma was just boarding the bus with one foot on the footboard and another foot was still on the ground. At that moment, due to earthing she received shock, fell down and died when she was being shifted to hospital. The claimants who are the minor daughters and widowed mother-in-law of the deceased laid claim in O.P.No.434 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short “MV Act”) against APSRTC for Rs.3 lakhs alleging fault on the part of driver of the bus for negligently stopping the bus underneath loosely hanging 11 KV live wires knowing that the wires might come into contact with the bus.

2) APSRTC contested the matter on the main plank of argument that there was no fault of the driver inasmuch as the entire accident was occurred due to negligence of the Electricity Department for leaving

electrical wires to dangerously hang down and that in fact Ex.A1— complaint was given not against the bus driver but against AD, AP TRANSCO and its employees.

3) This contention was not found favour with by the Tribunal which on appreciation of evidence observed that bus stopped in Manala bus stop just underneath the electric wires and in all probability the driver of the bus must seen the hanging wire and so, he was not supposed to stop the bus where the wire was hanging and the accident would not have occurred but for stopping the bus just beneath the live electrical wire. It further observed, that the electricity officials did not remove the live electrical wire despite several requests made by the public has no relevance to decide negligence on the part of bus driver. Accordingly, the Tribunal fixed fault on the bus driver and awarded Rs.3,32,000/- under different heads as below:

Loss of dependency Rs. 3,20,000.00

Love and affection Rs. 10,000.00

Funeral expenses Rs. 2,000.00

Total Rs. 3,32,000.00

Hence, the appeal by the disgruntled APSRTC.

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

5) Heard arguments of N.Vasedeva Reddy, learned counsel for appellants/APSRTC and Sri Y.S.Yella Nanda Gupta, learned counsel for respondents/claimants.

6a) The argument of learned counsel for appellants is two fold. Firstly, since the incident which resulted in death of the deceased was occurred when the bus was in stationary position, it cannot be held

as a motor vehicle accident to confer jurisdiction on Tribunal to decide the claim.

b) Secondly and alternatively he argued, assuming it were a motor vehicle accident, again the facts would reveal such accident was occurred due to the negligent way of Electricity Department allowing the live electrical wires to hang down and contributed by the passenger—Narasaiah who, without intimation to the driver and conductor climbed up the top of the bus and carelessly tried to bring down the cycle unmindful of dangerously hanging electric wires. He thus argued that in either case, the appellant cannot be fastened with liability. He thus prayed to allow the appeal and exonerate the appellant/APSRTC from liability.

7) Per contra, learned counsel for respondents/claimants argued that the accident took place during the course of user of the vehicle and hence, by all means it is a motor vehicle accident, wherein, wanting of prudence and diligence on the part of driver was writ large as he seeing the live wires hanging, still halted the bus beneath such wires. He thus prayed to dismiss the appeal.

8) In the light of above rival arguments, the point for determination in this appeal is:

“Whether the award passed by the Tribunal is factually and legally sustainable?”

9) **POINT:** Accident, involvement of bus bearing No.AP 10Z 3559 and death of the deceased are not in dispute. The first and foremost argument advanced on behalf of appellant is that the accident was not occurred when the bus was in motion but it was occurred when the bus was in a stationary position and thus, the death was not a motor vehicle accident within the ambit of MV Act to confer jurisdiction on the Tribunal to decide the claim.

10) In the light of this argument, it is pertinent to discuss whether the death of the deceased was due in a motor vehicle accident or not.

a) It is interesting to note that the term “motor vehicle accident” or

“accident” was not defined in MV Act. However, Section 140 and 165 of MV Act used the term “accident arising out of the use of motor vehicles”. Those Sections too did not explain the meaning of the above term.

b) In Section 140 of MV Act the above term is used in the context that where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner/owners of the vehicle shall be liable to pay compensation in respect of such death or disablement.

c) Whereas in Section 165 of MV Act it was used in the context that a State Government may by notification in the Official Gazette, constitute one or more Motor Accident Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death or bodily injury to the persons arising out of the use of motor vehicles or damage to any property of a third party or both.

d) Thus, it is clear that *sin quo non* for Tribunal to adjudicate upon a claim is the death or disablement under Section 140 of MV Act or death or bodily injury or damage to third party under Section 165 of MV Act arising out of the use of motor vehicle. Since the important term “arising out of the use of motor vehicle” has not been defined by the Legislature, it was subjected to judicial interpretation.

11a) In ***Shivaji Dayanu Patil v. Smt. Vatschala Uttam More*** the Apex Court was engaged with the interpretation of expression “arising out of the use of motor vehicle” contained in Section 92-A of Motor Vehicles Act, 1939 (Section 140 of MV Act, 1988). The facts briefly were that in the wee hours of 29.10.1987 there was a collision between a petrol tanker and a truck on National Highway No.4 in Satara District, Maharashtra State and thereby the petrol tanker fell on the left side at a distance of 20 feet from the high way. As a result of overturning of petrol tanker, petrol contained in it leaked out and collected nearby. At 7.15 AM an explosion took place in the petrol tanker resulting in fire and number of persons who assembled near

the petrol tanker sustained burn injuries and few of them succumbed to the said injuries. In the resultant claims under MV Act, the contention of appellants was that the explosion and fire resulting in injuries could not be said to be an accident “*arising out of the use of motor vehicle*” as the explosion took place about four hours after it fell aside. Disagreeing with the said argument, the Apex Court on referring various decisions, had interpreted the term “use of the motor vehicle” thus:

*“25. These decisions indicate that the word “use”, in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some break-down or mechanical defect. Relying on the abovementioned decisions, the Appellate Bench of the High Court had held that the expression “use of a motor vehicle” in Section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. **We are in agreement with the said approach of the High Court. In our opinion, the word “use” has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break-down or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck.**” (Emphasis supplied)*

It further observed thus:

“35In Section 92-A, Parliament, however, chose to use the expression “arising out of” which indicates that for the purpose of awarding compensation under Section 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression “arising out of the use of a motor vehicle” in Section 92-A enlarges the field of protection made available to the victims of an

accident and is in consonance with the beneficial object underlying the enactment.”

b) Thus, to decide whether the accident has arisen out of the use of motor vehicle or not, such motor vehicle at the relevant time of accident need not be in motion and it can be said to be in use even when it was stand still. Further, a casual relationship between the accident which resulted in death or permanent disablement and the motor vehicle is sufficient and there need not be a direct and proximate relationship.

c) The above decision was relied upon by the High Court of Kerala in ***Babu v. Remesan***. The facts were that some workmen engaged in loading a goods vehicle. For the safe transportation of the load in the vehicle, a rope was used for tying the load. One of the workmen, in order to make the end of the rope reached other side of the vehicle, threw it up but accidentally the rope which was wet fell on an overhead live electrical wire and the said workman was electrocuted resulting in loss of a limb. The High Court held that it was a motor vehicle accident arising out of the use of motor vehicle.

d) Subsequently, the above judgment was relied upon by our High Court in the case of ***Medikonda Narasamma v. Shaik Basheer Ahmed***. In that case, facts were that when the workers were unloading cotton bales from a vehicle, a bale fell on a person who was standing on the road margin resulting in his death. The learned Judge of this High Court Justice *N.V.Ramana* (as he then was) held that accident was occurred during the “use of the motor vehicle”. Incidentally the learned Judge decided the negligence aspect also.

12) In the light of above precedential jurisprudence on the point in issue, it can be safely concluded that accident in the instant case has arisen “*out of the use of motor vehicle*” and therefore, the contention of appellant that it was not a motor vehicle accident cannot be accepted.

13) Then the fault of the driver is concerned, the facts would show that the bus crew allowed the passengers to lay their luggage on the

top of the vehicle. The driver and conductor knew that at their respective bus stops concerned passengers would bring down their luggage. That was the case with Narasaiah also who loaded his cycle on the top of the bus. Irrespective of the fact whether he informed the driver and conductor about his climbing up the top of the bus to bring down his cycle, the driver and conductor knew that he would bring down the cycle. In such an event, the driver should not have stopped the bus beneath the sagging live wires giving a scope for cycle to come in contact with live electrical wire while it was being brought down. The negligence on the part of driver is writ large and it is futile to argue that he had no liability whatsoever. The Tribunal was right in fastening liability on driver and vicariously on its master i.e. APSRTC. Hence, I find no merits in the appeal.

14) In the result, this MACMA is dismissed by confirming the award passed by the Tribunal in O.P.No.434 of 2007. No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 03.08.2015

Murthy