

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1969 of 2012

JUDGMENT:

Aggrieved by the Award dated 25.11.20106 in M.V.O.P.No.1014 of 2008 passed by the Chairman, M.A.C.T-cum- V Additional District Judge, West Godavari at Eluru (for short 'the Tribunal'), the 4th respondent-APSRTC preferred the instant MACMA.

2) The factual matrix of the case is thus:

- a. On 16.07.2008, the claimant—Dwarabandham Bapiraju along with his son-in-law—Bandela Rambabu boarded the RTC hire bus bearing No.AP 37 Y 3377 at Tadepalligudem and got down at Duvva bus stand and as the claimant has to get change of Rs.3/- from the Conductor, he put his hands into bus through window and at that time the driver started the bus in a rash and negligent manner and at high speed and thereby the claimant fell down under the rear side wheel of the bus and sustained fracture injury to his left leg and left palm. Immediately he was shifted to Sri Sai Orthopedic Hospital, Tanuku for treatment. It is averred that accident was occurred due to rash and negligent driving by the driver of the APSRTC bus. On this plea, the claimant filed M.V.O.P.No.1014 of 2008 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against Respondent Nos.1 to 4, who are driver, owner, Insurer and APSRTC respectively and claimed Rs.2,70,000/- as compensation.
- b. Respondent Nos.1 and 2 remained *ex parte*.
- c. The 3rd respondent/Insurance Company filed counter denying all the material averments and urged to put the claimant in strict

proof of the same. R3 contended that R2/owner hired the crime bus with APSRTC and as such, APSRTC alone is liable to pay compensation. R3 Further contended that policy was not in force at the time of alleged accident and hence Insurance Company is not liable to pay compensation. Finally, R3 contended that claim is highly excessive and exorbitant and prayed to dismiss the OP.

- d. The 4th respondent/APSRTC contended that R1/driver was not employed by APSRTC and there is no master and servant relationship between them and as such there is no liability on it. R4 also contended that there is no privity of contract between it and R2/owner of the hired bus to fasten liability on APSRTC for the acts of R1/driver.
- e. During trial, PWs.1 and 2 were examined and Exs.A1 to A8 were marked on behalf of claimant. RW1 was examined and Exs.B1 and B2 were marked on behalf of respondents.
- f. The lower Tribunal on appreciation of both oral and documentary evidence awarded total compensation of Rs.1,00,000/- with costs and interest @ 6% p.a against respondent No.4/APSRTC while exonerating respondents 1 to 3.

Hence, the appeal by APSRTC.

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

4) Heard arguments of Sri S.V.Ramana, learned counsel for appellant/ APSRTC and Sri Naram Nageswara Rao, learned counsel for respondent No.1/claimant and Sri V.Srinivasa Rao, learned counsel for R4/Insurance Company. R2/driver unserved. Though notice sent to R3/owner of hired bus served, there is no representation on her behalf. Hence, treated as heard.

5) Fulminating the award learned counsel for appellant/APSRTC argued that as per Ex.B2—policy, the Insurance Company undertook the risk of third parties and policy was in force by the date of accident. Further, there is no stipulation in the policy restraining the owner to hire the vehicle and therefore, the Insurance Company cannot repudiate its liability merely because the crime bus was hired with APSRTC. However, the Tribunal without considering these aspects erroneously fastened liability on APSRTC instead of fixing liability on the Insurance Company. He argued that in the present circumstances, the liability will rest on the Insurance Company as per the Full Bench decision of this High Court reported in ***Andhra Pradesh State Road Transport Corporation vs. B.Kanakaratnabai***. He thus prayed to allow the appeal and fasten the liability on the original owner and insurer of the vehicle.

6) Per contra, learned counsel for respondent No.4/Insurance Company while supporting the award 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 by the date of accident and as such APSRTC can also be termed as ‘owner’ along with the original owner within the meaning of Section 2(30) of MV Act and therefore, the Tribunal rightly fixed the liability on APSRTC and as such the appellant/APSRTC cannot contend otherwise in this appeal. He thus prayed to dismiss the appeal.

7) **POINT**: Accident, involvement of APSRTC hired bus bearing No.AP 37 Y 3377 and injuries to claimant are not in dispute. The bone of contention is whether insured and insurer of the vehicle or the APSRTC being the hirer of the bus are liable for the claim. 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 ***B.Kanakaratnabai***'s case (1supra) 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.”

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(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).”

Therefore, in the light of above ruling of Full Bench, it is clear that the liability rests on the insured and insurer of the bus but not APSRTC. The Insurance Company has not brought on record that Ex.B2—policy prohibits the owner from leasing out the bus to third parties. Hence, the owner was well within his right to hire his bus to APSRTC. Therefore, there is no violation of any of the terms of the policy at the instance of the insured. Ex.B2 clearly manifests that Insurance Company covenanted to undertake the liability of third parties. Thus, in view of Full Bench decision and Ex.B2—policy covering the third party risk and hiring is not expressly barred, Insurance Company cannot absolve its liability on the pretext that bus was hired under

APSRTC by the date of accident.

8) In the result, this MACMA filed by APSRTC is allowed and ordered as follows:

(a) While upholding the compensation awarded by the Tribunal, the liability is fixed on respondents 2 and 3 in the OP i.e. owner and insurer of the crime bus. Consequently OP is dismissed against respondents 1 and 4 i.e. driver and APSRTC.

b) The respondents 2 and 3 in the OP are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

(b) No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 14.10.2015

Murthy

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Dt. 14.10.2015

Murthy