

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.861 of 2009

JUDGMENT:

This appeal is filed by the Insurance Company/respondent No.2 assailing the judgment and award, dated 10-10-2008 passed in O.P.No.630 of 2006 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Hyderabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the appeal, in brief, are as follows:

Petitioner is the injured, Respondents 1 to 3 are the owner, Insurance Company and Andhra Pradesh Road Transport Corporation (APSRTC) respectively.

On 08-10-2004, while the petitioner was proceeding in APSRTC bearing No.AP-9W-1764 from Lakdawala to Balajinagar at Alwal, the driver of the bus had driven the same in a rash and negligent manner and dashed a tipper lorry. Due to which, the petitioner sustained grievous injuries on various parts of the body. Immediately after the accident, the petitioner was shifted to Gandhi hospital and from there to Srinidhi hospital, wherein he took treatment as in-patient for a long time and spent huge amount towards medicines and treatment. Basing on the complaint, the Station House Officer, Alwal registered a case in Crime No.387 of 2004 against the driver of the crime vehicle. By the time of accident, the petitioner was aged about 42 years and used to earn Rs.4,000/- per month as driver of tractor. The crime vehicle belongs to the first respondent was insured with the second respondent – Company as on the date of accident and the bus was under the control of third respondent-Corporation. Therefore, respondents 1 to 3 are jointly and severally liable to pay

compensation to the petitioner. Hence, the petitioner is claiming compensation of Rs.1,00,000/-.

4. The first respondent remained *ex-parte*. The second respondent–Insurance Company filed counter denying the material averments *inter alia* contending that the insurance policy does not empower the first respondent to hire the bus. As such, the first respondent violated the terms and conditions of the policy. Therefore, this respondent is not liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. No premium was paid under I MT 44. Hence, the petition may be dismissed.

5. Third respondent filed counter denying the factum of accident. At the time of accident, the bus bearing No.AP-9W-1764 was insured with the second respondent-Insurance Company. Therefore, R-2 alone is liable to pay compensation, if any, to the petitioner. There is no cause of action to file the petition against this respondent and the petition may be dismissed.

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

1. Whether the petitioner sustained injuries in a motor vehicle accident occurred on 08-10-2004 due to rash and negligent driving of bus bearing No.AP9W-1764, by its driver?
2. Whether the petitioner is entitled to claim compensation and if so, how much amount and from which of the respondent?
3. To what relief?

7. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, no oral evidence was adduced and Exs.B.1 and B-2 were marked.

8. Basing on the material available on record, the Tribunal arrived at a conclusion that the accident was occurred due to rash and negligent driving of the driver of the bus which resulted injuries to the

petitioner and allowed the petition by awarding compensation of Rs.44,550/- with interest at the rate of 7.5% per annum directing the respondents 1 and 2 to pay amount to the petitioner. The petition against R-3 was dismissed.

9. Feeling aggrieved by the judgment and award of the Tribunal, the respondent No.2 – Insurance Company preferred the present appeal.

10. Heard Sri Kota Subba Rao, the learned counsel for the appellant. None appeared on behalf of the respondents.

11. Sri Kota Subba Rao, learned counsel for the appellant submitted that the finding of the Tribunal that the respondents 1 and 2 alone are liable to pay compensation to the petitioner is not sustainable.

12. Now the point for consideration is, whether the Tribunal is not justified in fixing the liability on respondents 1 and 2?

13. There is no much dispute with regard to the manner of the accident and quantum of compensation awarded by the Tribunal. It is also an admitted fact that the bus bearing No.AP-9W-1764 was insured with the second respondent-Insurance company and hired with APSRTC.

14. The Tribunal fastened the liability on respondents 1 and 2 basing on the decision of this Court in A.P.S.R.T.C., Musheerabad rep.by its Divisional Manager, Eluru Vs.K.Nagabhushanam vide C.M.A.No.2076 of 2001. The point urged in this appeal is no more resintegra in view of decision in **A.P.S.R.T.C., represented by its General Manager (now re-designated as Managing Director), Hyderabad and others v. B.Kanakaratnabai and others**^[1]. Wherein this Court held as under:

“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.

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 (11 supra) which was approved and upheld by the Supreme Court in G.Govindan (7 supra) and applied thereafter in Rikhi Ram (10 supra). 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 judgment cited supra, I am unable to accede the contention of learned counsel for the appellant that the Insurance Company is not liable to pay compensation to the petitioner. There are no grounds, much less, valid grounds to interfere with the well considered judgment and award of the Tribunal.

16. Accordingly, the Appeal is dismissed. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

05-02-2015
nvl

[\[1\]](#) 2013 (1) ALT 727 (FB)