

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.1894 OF 2013

JUDGMENT:

1 This appeal is filed challenging the judgment and award dated 21.7.2011 passed in M.V.O.P.No.522 of 2008 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-VI Additional District Judge, Kurnool, wherein and whereby an amount of Rs.7,00,000/- was awarded to the claimants as against the claim of Rs.13,00,000/-.

2 The parties to this appeal 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 petition are briefly as follows: On 11.3.2008 at about 1.20 p.m., Gajji Venkata Ramudu was crossing the road near SMT Colony bus stop, Yemmiganur on his Spark motor cycle bearing No.ABA 520. In the mean while, the driver of APSRTC bus bearing No.AP 21Y 0816 had driven the same in a rash and negligent manner and hit the motor cycle of Venkata Ramudu. Due to the accident, Venkata Ramudu sustained injuries on various parts of the body. Immediately after the accident, Venkata Ramudu was shifted to Government Hospital, Yemmiganur and from there while he was taking to Government General Hospital, Kurnool, Venkata Ramudu (hereinafter referred

to as, the deceased) died on the way. By the time of the accident, Venkata Ramudu was aged about 49 years and earning Rs.13,895/- per month as Senior Assistant in the Office of GRP Division No.2, Yemmiganur. The first petitioner is the wife, petitioner Nos.2 to 4 are children and petitioner No.5 is the mother of the deceased. The petitioners are dependants on the income of the deceased. The bus bearing No.AP 21Y 0816 belongs to first respondent was insured with the second respondent vide Policy Cover Note No.051005/31/07/01/ 00001401 with effect from 26.11.2007 to 25.11.2008. The bus was hired to the third respondent-APSRTC. Therefore, the respondent Nos.1, 2 and 3 are jointly and severally liable to pay compensation of Rs.13,00,000/- to the petitioners with interest and costs.

4 The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition including the manner of accident, age and income of the deceased. At the time of the accident, the bus belongs to the first respondent was hired to third respondent-APSRTC; therefore the third respondent alone is liable to pay compensation, if any, to the petitioners. It is the duty of the petitioners to prove that the driver of the bus was having valid and effective driving licence as on the date of the accident. Hence, the petition may be dismissed against the second respondent.

5 The third respondent-APSRTC filed counter denying all the averments made in the petition, *inter alia*, contending that the accident occurred due to the rash and negligent driving of the driver of the bus. The bus bearing No.AP 21Y 0816 belongs to the first respondent was insured with the second respondent; therefore, the respondent Nos.1 and 2 are only liable to pay compensation, if any, to the petitioners. Hence, the petition may be dismissed against this respondent.

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

1. Whether the accident occurred due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP 21Y 0816?
2. Whether the first respondent violated the terms and conditions of the Insurance Policy?
3. Whether the petitioners are entitled to any compensation from the respondents and if so, to what extent?
4. To what relief?

7 During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A1 to A6 were marked. On behalf of the third respondent, R.W.1 was examined and Exs.B1 to B3 and Exs.X1 to X3 were marked.

8 On appraising 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 which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.7,00,000/-. The Tribunal, while fastening the liability on the third respondent-APSRTC, exonerated the liability on respondent Nos.1 and 2. Feeling aggrieved by the judgment and award, the third respondent-APSRTC preferred the present appeal.

9 Learned counsel for the third respondent-APSRTC submitted that the Tribunal ought to have fastened the liability on respondent Nos.1 and 2, as the bus belongs to the first respondent was validly insured with the second respondent-Insurance Company as on the date of the accident. He further submitted that the finding of the Tribunal that the APSRTC alone is liable to pay compensation to the petitioners is not legally sustainable. Learned counsel for the first respondent-owner of the bus, submitted that the bus was insured with the second respondent-Insurance Company and hired to third respondent-APSRTC at the time of the accident. Learned counsel for the second respondent-Insurance company submitted that at the time of the accident the driver of the bus was under the control of the third respondent-APSRTC; therefore the APSRTC alone is liable to pay compensation, if any, to the petitioners. He further submitted that the first respondent hired the bus to the third respondent-APSRTC without the consent of the

second respondent—Insurance company; therefore, there is no statutory or contractual obligation on the part of the second respondent to indemnify the liability of the first respondent. None appeared on behalf of the petitioners—claimants.

10 Basing on the rival contentions, the only point that arises for consideration in this appeal is:

Whether the Tribunal has committed any error while fastening the liability on the third respondent—APSRTC and exonerating the liability of respondent Nos.1 and 2—owner and insurer of the accident bus?

Point:

11 The following facts can be culled out from the facts pleaded and proved. The bus bearing No.AP 21Y 0816 belongs to the first respondent was hired to the third respondent under Ex.B2 agreement dated 07.1.2008. The bus was insured with the second respondent vide Policy Cover Note No.051005/31/07/01/00001401 with effect from 26.11.2007 to 25.11.2008. The accident occurred due to the rash and negligent driving of the driver of the bus, which resulted in the death of the deceased. The third respondent—APSRTC is not disputing the quantum of compensation awarded by the Tribunal. The claimants have not filed appeal or cross-objections seeking enhancement of compensation awarded by the Tribunal. Therefore, there is no need to delve into this aspect in this appeal.

12 The crucial question that falls for consideration is: *Whether the second respondent–Insurance Company is justified in taking the stand that the third respondent alone is liable to pay compensation?* Opposing the stand taken by the second respondent and substantiating the contention that the third respondent shall be exonerated from the liability, learned counsel for the third respondent 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.

13 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 first respondent alone is liable to pay compensation is not legally sustainable.

14 As observed earlier, the bus belongs to the first respondent was insured with the second respondent under Ex.B1 Policy with effect from 26.11.2007 to 25.11.2008. 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 petitioners. The petition against the third respondent-APSRTC is liable to be dismissed. The Tribunal has committed error, while fastening the liability on the third respondent-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.

15 At the time of arguments, learned counsel for the third respondent-APSRTC submitted that while granting interim stay, on 10.4.2012, this court directed the third

respondent to deposit 50% of the decretal amount awarded by the Tribunal. In compliance of the said direction, the third respondent deposited the said amount. If the claimants have already withdrawn the amount, the third respondent-APSRTC is at liberty to recover that amount from the respondent Nos.1 and 2 by following due process of law.

16 In the result, the appeal is allowed, exonerating the liability on the part of the third respondent-APSRTC. The respondent Nos.1 and 2 shall jointly and severally pay the compensation of Rs.7,00,000/- (Rupees seven lakhs only) to the petitioners with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation. The petitioners are entitled to the compensation as apportioned by the Tribunal. The third respondent-APSRTC can recover the amount deposited by it, as per the directions of this court dated 10.4.2012, 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: 31st July, 2015.

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^[1] 2013 ACJ 1593 = 2013(1) ALT 727