

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.846 of 2010

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 by the insurance company challenging the judgment and award dated 23.03.2010 passed in M.V.O.P. No.404 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati (for short, 'the Tribunal')

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 30.12.2007, the petitioner boarded the A.P.S.R.T.C. bus bearing No.AP-28-Z-311 at Srikalahasthi to go to Tirupati. In the meanwhile, the driver of the A.P.S.R.T.C. hired bus bearing

No.AP-03-W-8469 (for short, 'hired bus') had driven the same in a rash and negligent manner and dashed the R.T.C. bus from opposite direction. The accident occurred due to the rash and negligent driving of the driver of the hired bus, against whom the Station House Officer, Srikalahasthi Urban Police Station registered a case in Crime No.178 of 2007 for the offences under Sections 337 and 279 I.P.C. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment for long time. 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.1,50,000/- to the petitioner with interest and costs. Hence, the petition.

4. The first respondent filed counter denying all the averments made in the petition, *inter alia*, contending that there was no negligence on the part of the driver of the R.T.C. bus. The accident occurred due to the negligent act of the petitioner. 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 averments made in the petition, *inter alia*, contending that the accident occurred due to the negligent driving of the driver of the R.T.C. bus and there was no negligence on the part of the driver of the hired bus. A.P.S.R.T.C. alone is liable to pay compensation to the petitioner as at the time of accident the bus was under its control. 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 petitioner sustained injuries due to accident arising out of the use of APSRTC bus bearing Regn. No.AP 03 W 8469 of second respondent and APSRTC bearing Regn. No.AP 28 Z 311 of first respondent?
2. Whether the bus in question belongs to the second respondent and hired to first respondent and stood insured with the third respondent by the date of the accident and if so, whether policy covers the risk of the petitioner?
3. Whether the petitioner suffered injuries and entitled to compensation and if so to what amount from which of the respondents?
4. Whether the OP is bad for non-joinder of necessary parties?
5. To what relief?

8. During the course of the trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.8 were marked. On behalf of respondent Nos.1 and 3, RWs.1 and 2 were examined and Exs.B.1 and B.2 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 the rash and negligent driving of the driver of the hired bus, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.1,03,200/-. Feeling aggrieved by the judgment and award of the Tribunal, the third respondent – insurance company preferred the present appeal.

10. Heard Sri Kota Subba Rao, learned standing counsel for the appellant – insurance company (third respondent) and Sri K.Maheswara Rao, the learned counsel for respondent No.1 (petitioner).

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

Whether the Tribunal has committed any error while fastening the liability on the third respondent?

Point:

12. There is no much dispute with regard to the *factum* and manner of the accident. The third respondent is also disputing the quantum of compensation awarded by the Tribunal. The oral testimony of RWs.1 and 2 coupled with Ex.B.1 – hire agreement clearly reveals that the second respondent hired the bus to A.P.S.R.T.C. The oral testimony of RWs.1 and 2 coupled with Ex.B.2 – policy clinchingly establishes that the hired bus was insured with the third respondent - insurance company as on the date of the accident. The fact remains that the hired bus was under the control of A.P.S.R.T.C. as on the date of accident.

13. 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**, wherein it was held that though the bus is hired with APSRTC, insurance company alone has to pay the compensation to the injured or the legal representatives of the deceased.

14. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to agree with the submission made by the learned Standing Counsel for the third respondent that the Tribunal has committed error while fastening liability on the third respondent. Accordingly, the point is answered against the insurance company.

15. 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.

T.SUNIL CHOWDARY, J

Date: 01.05.2015

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