

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1173 OF 2005

Judgment:

The third respondent – Andhra Pradesh State Road Transport Corporation, in MVOP No.468 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Kadapa (for short 'the Tribunal'), is the present appellant. Aggrieved with the order, dated 07.03.2005, whereby and whereunder the Tribunal fastened liability exclusively on the third respondent to pay compensation of Rs.1,13,000/- with interest at 9% p.a., while exonerating the second respondent – Insurance Company and the first respondent – owner who has hired the bus to the third respondent, the instant appeal is preferred seeking to set aside the said order and decree.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petition.

3. The facts-situation occurring in the instant case is that on 10th August 2001 the petitioner was travelling in APSRTC bus bearing registration No.AP-9Z-5858 to Bhakarapeta and when it reached near JMJ College of Kadapa town on Kadapa – Rajampeta main road, at about 2.35 PM, another bus bearing registration No.AP-04T-9559, belonging to the first respondent and hired to the third respondent, came from behind and dashed it, having driven it in a rash and negligent manner at high speed while overtaking the RTC bus, on account of which, the passengers including the petitioner received injuries. According to the petitioner, he was admitted in Government Hospital, Kadapa, and was treated as inpatient for 45 days and, thereafter, taken treatment in SVRR Hospital, Tirupati, and in private hospitals, as referred to by him in paragraph '2' of the order and, thereby, sought Rs.1,00,000/- as compensation.

4. Before the Tribunal, the first respondent – owner of the bus remained *ex parte*. The second respondent – Insurance Company opposed the claim by filing a detailed written statement. The third respondent – APSRTC also opposed the claim raising various pleas and disowning its liability on the ground that the first respondent hired the vehicle to it and there was valid coverage of insurance policy at the relevant time issued by the second respondent – Insurance Company.

5. The Tribunal, basing on the said pleadings, framed three issues about the responsibility for the accident. During enquiry, the petitioner, besides examining himself as PW.1, also examined the Medical Officer, who treated him, as PW.2 and marked Exs.A1 to A14 as regards his entitlement for the claim made. On behalf of the third respondent - APSRTC, RW.1 was examined and attested Xerox copy of agreement, executed between the first and third respondents, was marked as Ex.B1.

6. The Tribunal, on over all assessment of the evidence on record, held issue No.1 in favour of the petitioner.

7. On issue No.2, the Tribunal, based on the evidence of PW.2, determined the compensation at Rs.1,13,000/-, but however, referring to clause 5(iv) of Ex.B1 and Clause 15 therein held that the third respondent – Corporation was liable to compensate the petitioner and, thereby, exonerated the first and second respondents.

8. Aggrieved of the aforesaid order, the instant appeal is preferred contending in the grounds of appeal that in view of the latest judgment of the Hon'ble Apex Court in **P.P. Mohammed v. K. Rajappan**, and the observations made in paragraph '8' therein the first and second respondents are liable to pay the compensation, but not the Corporation. It is also stated that the Tribunal, somehow, overlooked the fact that during the subsistence of policy, the insurer has to indemnify the liability of the third party under the policy, hence, sought to set aside the order and decree passed against it.

9. Heard Sri A. Rama Rao, learned Standing Counsel for the APSRTC, Sri L.J. Veera Reddy, learned counsel for the first respondent and Sri V. Sambasiva Rao, learned counsel for the third respondent – Insurance Company. No representation on behalf of the second respondent.

10. During the course of arguments, learned Standing Counsel for the appellant placed reliance on the decision of Full Bench of this Court in **APSRTC, rep. by its General Manager, Hyderabad v. B. Kanakaratnabai** for the proposition that in a fact-situation occurring as the one herein, where there has been hire agreement between the owner of the bus and the Corporation without intimation to the Insurance Company, the liability of the Insurance Company cannot be exonerated and the Corporation cannot be made liable. The observations and conclusion of this Court in the Full Bench judgment contained in paragraph '90', since relevant, extracted thus:

“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 *Modineni Kondaiah* (AIR 1986 AP 62 (FB)) which was approved and upheld by the Supreme Court in *G. Govindan* (1999 ACJ 781 (SC) = (1999) 3 SCC 754) and applied thereafter in *Rikhi Ram* (2003 (1) An.W.R.343(SC)). We answer the question referred to us for decision accordingly. All the matters shall be placed before the appropriate Courts for individual adjudication.”

11. Learned counsel for the Insurance Company – third respondent herein fairly concedes the said legal position. Therefore, the appeal is to be invariably allowed and, accordingly, the appeal is allowed setting aside the order and decree passed by the Tribunal fastening liability on the Corporation. As a consequence, the first respondent – owner of the bus and the second respondent – insurer in the original petition, who are the respondents 2 and 3 herein are jointly and severally liable to pay compensation determined by the Tribunal with interest granted by the Tribunal.

There shall be no order as to costs.

12. As a sequel thereto, the Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 31.03.2015

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