

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.1899 of 2010

IN/AND

M.A.C.M.A.No.2911 of 2015

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ORDER:

The appellant, who is the 3rd respondent of O.P.No.3089 of 2004, aggrieved by the award of the tribunal dated 14.09.2007 of the claim filed by seven claimants, no other than legal representatives of the deceased by name, Syed Habeeb under Section 163-A of the Motor Vehicles Act(for short 'the Act') for Rs.4,00,000/-, against owner, insurer and hirer of the private bus i.e., M.Sumathi Reddy, The New India Assurance Company Ltd, A.P.State Road Transport Corporation(for short 'A.P.S.R.T.C'), held by fixing compensation of Rs.3,61,600/- with interest at 7.5%p.a. in saying all the three are jointly and severally liable in directing insurer of the bus to deposit the entire amount and can recover the same from owner and the APSRTC (hirer), respectively equally with the conclusion that liability of the owner will not cease from non-intimation of the Apex Court in **Rikhiram v. Smt.Sukhrania**^[1] (three judges Bench) held under Section 94 of the old Act, 1939=new 146, the transfer of the vehicle ownership, equally that of the purchaser and thereby following the same. It is the same now impugned in the appeal filed by APRTC against

claimants, owner and the insurer of the said private bus bearing No.AP 22U 1965.

2. The appeal is filed with delay condonation of 213 days with the affidavit explanation for the delay, as administrative delay in obtaining certified copies, according sanction to file and obtaining funds in filing the appeal.

3. Heard and perused the material on record. The delay is condoned. The appeal is taken up for hearing at request of the appellant/APSRTC the 3rd respondent to the claim petition and 2nd respondent-insurer of the claim petition. The 1st respondent, no other than owner impleaded as

8th respondent to the appeal, even served failed to attend and thus taken as heard. Even among the seven claimants appeal dismissed but for against respondents 3 and 4, it is represented in this regard that they are not necessary parties as the dispute is between the owner, insurer, and hirer/APSRTC, respectively regarding liability for not disputing the quantum or entitlement by the claimants .

4. It is the contention of the learned counsel for the APSRTC in support of the grounds of appeal that the tribunal gravely erred in fixing liability for recovery from the APSRTC and the owner of the vehicle, respectively by the

insurer while directing the insurer of the vehicle to initially pay to the claimants, that the tribunal gravely ignored the scope of Section 157 of the Act, equally Section 94(old)=146(new) which have no application for the hired vehicle, as the same was even held by the Apex Court in ***Uttar Pradesh State Road Transport Corporation v. Kulsum***^[2] that followed by the Full Bench of this Court in ***APSRTC, Hyderabad V. B.Kanakaratnabai***^[3] and hence to allow the appeal setting aside the fixing of liability of recovery against APSRTC despite insurer is liable to indemnify from the policy holds good and covers the risk.

5. Whereas, it is the contention of the insurer, who is respondent No.9 herein by placing reliance on the latest expression of the Apex Court in ***Managing Director, Karnataka State Road Transport Corporation v. New India Assurance Co. Ltd.***^[4] that liability to be fixed is joint with the provision for recovery and thereby the tribunal is right in holding so and for this Court while sitting in appeal there is nothing to interfere including from the latest expression in ***Karnataka State Road Transport Corporation*** (supra) and hence to dismiss the appeal.

6. Heard and perused the material on record.

7. In ***Rikhiram*** (supra), the principle laid down is with reference to transfer of ownership of the vehicle and non-

intimation to the insurer and not with reference to the hiring of the vehicle. In fact, from reading of the expression of the Apex Court in **Kulsum** (supra) Section 157 of the Act is not applicable for hiring of the vehicle as it is not transfer of ownership to intimate within four months of the transfer even for such violation though mandatory to pay and recover. Thus, the tribunal gravely erred in relying on **Rikhiram** (supra) for the hire of the vehicle. No doubt, by the time the judgment of the tribunal delivered on 14.09.2007 **Kulsum** (supra) and **Kanakaratnabai** (supra) are not there.

8. Even coming to the decision placed reliance by the insurer in **Karnataka State Road Transport Corporation**(supra), it is by scanning the entire law right from **Rajasthan State Road Transport Corporation v. Kailash Nath Kothari** (1997 ACJ 1148(SC)), **National Insurance Co. Ltd. v. Deepa Devi** (2008 ACJ 705 SC), **Pushpa v. Shakuntala** (2011 ACJ 705(SC)), **Purnya Kala Devi v. State of Assam** (2014 ACJ 1269(SC))(three judges Bench) in the course of requisition of a vehicle for an election purpose by State of Assam, **Godavari Finance Company v. Degala Satyanarayanaamma** (2008 ACJ 1612 SC), in case of hire purchase and the latest expression in relation to hire purchase **HDFC Bank Ltd. v. Reshma** (2015 ACJ 1 SC) (three judges Bench), where holding financier of hire purchase agreement cannot be

made liable for not accrual user owner but the actual owner of the vehicle that in control to be made liable and the expression in **Kulsum**(supra) of insurer cannot be exonerated from liability once policy covered the risk even there is no intimation of the transfer of the vehicle under hire to the RTC concerned and there from concluded the joint liability of the owner and the person taken on hire i.e., APSRTC and also the insurer and also with the observation that once there is a transfer for the limited purpose by hire it is deemed with the policy also vehicle transfers with the liability of the insurer to indemnify. No doubt, on facts held from the award of the tribunal went in appeal, the Karnataka High Court fixed the liability against the RTC only holding within the meaning of Section 2(30) of the Act as owner and not the original owner and insurer from which the RTC paid the amount in directing to recover from the owner. Needless to say equally from the insurer to indemnify do not so specifically stated. Thus, there is nothing new laid down by the expression of **Karnataka State Road Transport Corporation**(supra) but for to say followed **Kulsum** (supra) to hold all jointly liable. The Full Bench expression of this Court in **Kanakaratnabai** (supra) following **Kulsum**(supra) held that the insurer is liable and not the RTC. Whereas, the latest expression in **Karnataka State Road Transport Corporation**(supra), referred three judge Bench

expressions of **Purnya Kala Devi**(supra) and **HDFC Bank Ltd**(supra) held, all the three i.e., real owner and the RTC. to whom it is hired and the insurer all jointly liable. As such once there is a liability of insurer to indemnify and even there is no intimation of the hire to RTC, as Section 157 of the Act has no application but for transfer of ownership, so far as hiring of vehicle concerned as laid down in **Kulsum** reiterated in **Kanakaratnabai(supra)**, the question of recovering by the insurer from the owner or the RTC does not arise but for any other violations of the policy and permit or driver has no valid license. Herein it is not such a case of other violations of the policy to order pay and recovery even.

9. Having regard to the above, the fixing of liability by the tribunal on insurer though holds good, the further observation to recover by the insurer equally from the owner and the APSRTC is unsustainable and liable to be set aside.

10. Accordingly and in the result, the appeal is allowed by setting aside the observation of the tribunal fixing recovery of liability to the insurer against the owner and APSRTC for no such contingency arises but for the insurer to pay from the policy covered the risk and liable to indemnify. It is needless to say whatever the amount so far deposited by the APSRTC and permitted if any to the claimants, the APSRTC is entitled to recover from the

owner and insurer and whatever the amount in deposit if not permitted is to withdraw by the APSRTC.

11. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:31-12-2015

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L.R. copy to be marked-Yes

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

M.A.C.M.A.M.P.No.1899 of 2010

IN/AND

M.A.C.M.A.No.2911 of 2015

% 31-12-2015

#A.P.State Road Transport Corporation

....Appellant

Vs.

\$ Smt.Hazeera Begum and eight others

.... Respondents

!Counsel for the appellant : Sri K.Madhava Reddy

Counsel for Respondent No.9: K.Subba Rao

<Gist :

>Head Note:

? Cases referred:

[1] 2003 ACJ 534 SC

² (2011)8 SCC 142

³ 2013(1)ALD 644 (FB)

⁴ 2015 ACJ 2849

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD**

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

M.A.C.M.A.M.P.No.1899 of 2010

IN/AND

M.A.C.M.A.No.2911 of 2015

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#A.P.State Road Transport Corporation

....Appellant

Vs.

\$ Smt.Hazeera Begum and eight others

.... Respondents

DATE OF ORDER PRONOUNCED: 31-12-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment?

Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals?

Yes/No
3. Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment?

Yes/No

[\[1\]](#) 2003 ACJ 534 SC

[\[2\]](#) (2011)8 SCC 142

[\[3\]](#) 2013(1)ALD 644 (FB)

[\[4\]](#) 2015 ACJ 2849