

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

**MACMA MP Nos.3465 of 2012 & 3966 of 2015 in MACMA
No.2614 of 2015 & MACMA No.2614 of 2015**

COMMON ORDER :

The appellants herein are the respondent Nos.1 and 2 of O.P. No.127 of 2009 dated 22.07.2011 on the file of Chairman, Motor Accident Claims Tribunal-cum-IX Additional District & Sessions Judge, Kamareddy, where the claim petition filed under Section 166 of the Motor Vehicles Act for compensation of Rs.2,00,000/- by the injured/claimant, who is 1st respondent herein, against the four respondents including the two appellants/respondent Nos.1 and 2, the owner of the hired bus with the respondent Nos.1 and 2 herein A.P.S.R.T.C by name M.L.Rajam as the 3rd respondent and the insurer New India Assurance Company Limited as respondent No.4. The said petition filed for the injuries sustained in the accident dated 09.05.2007. Before the Tribunal, the appellants contested of no liability, equally the insurance company of the hired bus with A.P.S.R.T.C. insured by the owner contested of no liability by claiming the A.P.S.R.T.C liable as per insurance company vice versa. The owner of the bus, 3rd respondent to the claim petition remained exparte before the Tribunal and even impleaded in the appeal as 2nd respondent and for not taking fresh notice, dismissed for default on 30.03.2015 no way fatal vide ***Meka Chakra Rao v.***

Yelubandi Baburao^[1]. It is from respective contest, the Tribunal in fact came to the conclusion of all jointly liable, however, apportioned the liability against the A.P.S.R.T.C. 50% against the owner and insurer 50%.

2) It is impugning the same, pertaining with 50% liability, the A.P.S.R.T.C preferred the appeal. It is in filing the appeal with a delay of 53 days, an application in M.A.C.M.A.M.P. No.3465 of 2012 filed. The reasons assigned for the delay is administrative delay in giving opinion and according sanction and in filing from the sufficient cause explained and from the parties on record contesting. Heard and the delay is condoned and at request of both the parties and from the owner of the bus not a necessary party to the appeal since insurer is there to indemnify and remained exparte before the Tribunal, same is recorded vide **Meka Chakra Rao** supra and the appeal is taken up for hearing.

3) The other application is filed by the claimant in M.A.C.M.A. M.P.No.3966 of 2015 to permit withdrawal of the amount deposited by the A.P.S.R.T.C.

4) Heard and perused the material on record. It is not in dispute of the law is fairly settled by the expression in **Uttar Pradesh State Road Transport Corporation V. Kulsum**^[2] reiterated by the full bench expression of this Court in **APSRTC, Hyderabad V. B.kanakaratnabai**^[3] that

there is no provision for the insurer to be exonerated from liability even for any non-intimation of the hiring of the bus by the owner to the insurer for not a transfer within the purview of Section 157 of the Motor Vehicles Act.

5) Having regard to the above, it is the insurer that can be made liable to indemnify not only the owner but also the vehicle hired i.e., A.P.S.R.T.C for having to exonerate liability. Therefore, 50% liability on the A.P.S.R.T.C. since unsustainable and what is the amount deposited by the A.P.S.R.T.C. is entitled to take back and hence the petition in M.A.C.M.A. M.P. No.3966 of 2015 is dismissed.

6) In the result, the appeal is allowed and the insurer is directed to deposit the entire compensation amount as awarded by the Tribunal within two months, failing which the claimant can execute for recovery. There is no order as to costs.

7) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27.11.2015
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[\[1\]](#) 2001(1)ALT 495 DB
[\[2\]](#) (2011)8 SCC 142
[\[3\]](#) 2013(1)ALD 644 (FB)