

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No. 3412 OF 2010

IN / AND

M.A.C.M.A. No.147 of 2016

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JUDGMENT:

Heard.

2) The delay of 105 days in filing the appeal is condoned as the reasons assigned are due to administrative delay in obtaining the permission with legal opinion, to accord sanction and in getting certified copy of the award of the Tribunal.

3) The respondents 1 and 3, injured claimant and the insurer of the bus even served failed to attend, hence taken as heard in the appeal filed by the APSRTC—3rd respondent to the claim petition. The 2nd respondent herein is the 1st respondent to the claim petition—owner of the hire bus, remained exparte before the Tribunal and even impleaded and dismissed for default vide order dated 23.02.2015, is no way fatal to the maintainability of the appeal vide **Meka Chakra Rao vs Y.Babu Rao**^[1] and the same is recorded.

4) Heard learned counsel for appellant and perused the material on record.

5) The brief averments in the claim petition are that the claim petition M.V.O.P. No.389 of 2008 (is renumbered from M.V.O.P. No.259 of 2006 on the file of District Judge Court, Kadapa) on the file of Motor Accident Claims Tribunal cum V Additional District Judge, Rayachoty, was filed by injured

claimant of the motor accident dated 02.05.2005 under Section 166 M.V Act for the claim of Rs.50,000/- alleging that it is due to rash and negligent driving of hired bus bearing No.AP 02 U 6323 of 1st respondent—owner of the bus hired with 3rd respondent—APSRTC insured with 2nd respondent—insurer and the claimant sustained injuries and the Tribunal vide award dated 08.09.2009 from contest awarded compensation of Rs.15,000/- with interest at 7.5% per annum only against APSRTC by exonerating the owner and insurer of the bus by placing reliance upon the expression of the Apex Court in ***Rajasthan State Road Corporation vs Kailash Nath Kothari***^[2] that was followed by another judgment of this Court in ***Oriental Insurance Company Limited vs J.Bhaskar Rao***^[3] by interpreting Section 2(30) of the Motor Vehicle Act, that RTC is owner with control and thus alone liable for all purposes. It is impugning the same, present appeal is filed with contentions in the grounds of appeal that the Tribunal gravely erred in fixing liability on the RTC instead of fixing liability on the insurer and owner of the hired bus and thereby, the award is to be set aside and RTC is to be exonerated from liability but for the owner and insurer of the bus.

6) In fact, the law is fairly settled by referring to that Kailash Nath Kothari (supra) by the Apex Court in ***Uttar Pradesh State Road Transport Corporation vs Kulsum***^[4] including by considering the scope of Sections 157 and 2(30) of the M.V Act in saying there is no provision under the M.V Act for Section 157 has no application but for transfer of

ownership, to exonerate the insurer from liability for the bus hired with RTC by owner, once there is a policy covering the risk even from any non-intimation to the insurer of the hiring of the bus by owner to RTC. This Court a on reference in

General Manager, APSRTC vs B.Kanakaratna Bai ^[5]

answered relying upon kulsum's case supra that the insurer and owner cannot be exonerated from liability. The latest expression of the Apex Court in ***Managing Director, KSRTC vs New India Assurance Company Limited*** also it was held relying upon kulsum's case and referring to several other expressions that the RTC, hired owner and the insurer are jointly liable to pay compensation. The Tribunal thus was erred in fixing liability on the RTC alone by exonerating the owner and insurer of the vehicle instead of fixing liability jointly against the owner, insurer and RTC for paying the compensation.

7) Accordingly, the appeal is partly allowed by fixing joint liability against owner, insurer and the RTC for the insurer to indemnify the owner and RTC as the bus is hired with and with policy coverage. Needless to say any amount so far paid by RTC is entitled to recover from the insurer. No order as to costs.

8) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

18.01.2016

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[1] 2001 (1) ALT 495 DB
[2] AIR 1997 SC 3444
[3] 2009 (2) ALT 512
[4] 2011 (8) SCC 142
[5] 2013 (1) ALD 644