

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.1063 of 2016

JUDGMENT:

The 3rd respondent-APSRTC (for short, 'the Corporation') among the 3 respondents including the owner and insurer of the hired bus bearing No.AP 04 T 9655, in the claim maintained under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), in M.V.O.P.No.381 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal–cum-VI Addl. District Judge, Kadapa, (for short, 'the Tribunal') by the injured while proceeding on TVS 50 moped as pillion rider in which the rider died on the spot and he(the claimant herein) received severe injuries in the accident dated 04.02.2006 caused due to rash and negligent driving of the driver of the crime bus, for Rs.1,50,000/-(Rupees one lakh fifty thousand only), but the tribunal by its award dated 29.06.2011, granted of Rs.1,08,800/-(Rupees one lakh eight thousand and eight hundred only) with interest at 7%p.a. fixing liability against 3rd respondent-Corporation (appellant herein) by dismissing the claim against 2nd respondent(Insurer).

2. It is impugning the same, the present appeal is filed by the Corporation with a petition vide MACMAMP No. 4683 of 2011 seeking to condone the delay of 19 days in filing the appeal and the same is condoned.

3. The contentions in the grounds of appeal are that the tribunal failed to see that the liability of the Corporation does not arise in view of Clause VI of the Hire Agreement which categorically stipulates that in case of Motor Accidents claims, it is only the owner and Insurer who are liable to pay compensation and the trial Court ought to have seen that the Corporation is reimbursing the premium paid by the owner to the Insurance Company and so the Corporation cannot be fastened with liability, hence to exonerate the Corporation by fixing liability on the Insurer.

4. Heard the learned counsel for the appellant and the Insurer-

3rd respondent of the appeal and the appeal against 1st respondent(claimant) is dismissed for default vide Court order dated 17.03.2015 and 2nd respondents(owner of the crime bus) even served not turned up taken as heard so also heard the learned standing counsel for the Insurer and perused the material on record.

5. The law is fairly settled from the expression of the UPSRTC Vs. Kulsum^[1] which is reiterated in the APSRTC Vs. B.Kanakaratna Bai^[2] more particularly with reference to Section 157 of M.V.Act also, held that the Insurer is also liable along with the owner and the Corporation too indemnify the third party. Having regard to the above, the exoneration by the tribunal of the Insurance Company is unsustainable.

6. In the result, the appeal is allowed in part by fixing joint liability on all the respondents of the claim petition (includes appellant herein). Needless to say any amount, paid or deposited by the appellant, can be withdrawn by filing cheque petitions and permitted to recover from the injured as injured is indemnified by virtue of the policy. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 12.02.2016
Vvr

^[1] (2011) 8 SCC 142.

^[2] LAWS(APH)-2012-11-66