

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1506 OF 2010

JUDGMENT:

The appellant-Insurer is the 2nd respondent out of two respondents including owner of the crime vehicle (Eicher van bearing No.AP-02-U-9496) covered by Ex.B.1 policy in the claim maintained by the injured claimant(1st respondent herein) in O.P.No.499 of 2008 on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum–IV Additional District Judge, Anantapur, (*for short, 'Tribunal'*) under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), for the compensation of Rs.3,00,000/- for the grievous injuries to his right hand sustained in the accident dated 16.04.2008 at 9.00 P.M., while travelling in the APSRTC Bus bearing No.AP-10-Z-8556 due to rash and negligent driving of the driver of the crime vehicle (Eicher van) which dashed the bus. On hearing both sides, the tribunal since granted Rs.2,59,000/- with interest at 7.5%p.a. by fixing joint liability against both the respondents, the Insurer preferred this appeal with the contentions that the Eicher van is falsely implicated in the crime, that the tribunal failed to see that it is a hit and run case as no eye witness stated about the number of the vehicle involved in the accident, that the tribunal failed to dismiss the petition in limini for non-joinder of necessary parties of driver of van and owner and driver of APSRTC bus, that the tribunal failed to see that the petitioner and RTC bus have contributed for causing the injuries in the said accident as the petitioner stretched his hand through the window of the bus and the tribunal also failed to see that the driver of the crime vehicle not possessed valid and effective driving licence, hence to set aside the award of the tribunal by exonerating the appellant.

2. During the pendency of the appeal, the APSRTC is impleaded as 3rd respondent since the claimant was undisputedly travelling in the RTC bus.

3. Heard the learned counsel for the appellant as well as the learned counsel for the 1st respondent-claimant from the 2nd respondent-owner of the vehicle remained exparte before the tribunal was endorsed as not necessary party and by virtue of the expression of this court in **M.Chakra Rao v. Y.Baburao**^[1] the same is recorded and perused the material on record.

4. It is the contention of the 3rd respondent-APSRTC that the tribunal is right in its finding holding the negligence on the part of the driver of the van of the 1st respondent insured with the 2nd respondent-appellant herein. There is nothing to attribute any negligence on the part of the driver of the RTC bus to say any liability for any composite or contributory negligence of RTC bus for the first time impleaded in the appeal, hence the APSRTC is not all liable for anything.

5. The fact that the injured-claimant was travelling in the RTC bus by sitting back right side of the bus stretching his hand outside the window is proved from the evidence on record before the tribunal. If the driver of the APSRTC bus also not contributed to the accident, the driver and conductor of the bus could have cautioned the passengers not to stretch the hands outside the window pane and there is negligence to that accident on the part of the RTC as also observed in this regard by the Division Bench expression in **Managing Director, APSRTC, Musheerabad, Hyderabad Vs. Om Prakash Agarwal**^[2] the similar facts of a passenger of RTC bus exposing his hands by stretching outside the window was crushed in the accident caused by the opposite coming lorry, the liability apportioned 50% each therein. The learned counsel for the claimant injured now wants to rely to that expression however as rightly pointed out by the learned counsel for the 3rd respondent-RTC that the facts of that expression are different with the facts of the present case. In this case, the FIR was undisputedly registered against the van driver from the report against

the alleged negligence and the so called injured witness-P.W.1 deposed alleged negligence on the part of the driver of Eicher van coming in opposite direction. Undisputedly, neither P.W.1 nor scene observation filed by both sides which are crucial to decide manner of accident and the extent of damage to each of the two vehicles while proceeding opposite direction. The fact that by sitting at the back right side of the bus, the injured was travelling by stretching hand outside the window pane once not disputed, the manner of accident shows the van is colluded with the bus and the accident occurred when the injured was sitting at the back right side of the bus but not even at front side that itself also shows negligence of both vehicles. When such is the case, no doubt the contributory or composite negligence depends upon several factors like size, condition and width of the road and vehicles, manner of accident and damage caused to the vehicles and sitting place of the persons injured while proceeding as can be depicted from the scene observation report. But as observed supra, there is no scene observation report filed before this Court by any of the party. What the settled law is that in the accident there is involvement of two vehicles, one of the vehicle driver owner and insurer even not impleaded, the claim can be satisfied by the respondents i.e. driver, owner and Insurer of even one vehicle as joint tort features to claim against the other for apportionment after satisfaction of the claim of the claimants once there is a policy covering the risk.

6. Having regard to the above, the appeal is allowed while upholding the quantity of compensation awarded by the tribunal of Rs.2,59,000/- with interest at 7.5% p.a. with joint liability against the respondents 1 and 2, the joint liability is modified against the respondents 1 and 2 (1st and 2nd respondents of the claim petition), as against the respondents 1 to 3 by fixing liability of the 3rd respondent-RTC to the extent of 40% and the remaining 60% to the owner and insurer of the Eicher van (respondents 1 and 2 of the claim petition).

Rest of the award holds good. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed. There is no order as to costs of the appeal.

Dr. B. SIVA SANKARA RAO, J

Date: 22.04.2016

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[\[1\]](#) 2001 (1) ALT 495 DB

[\[2\]](#) 1999(6) ALD 732