

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1959 of 2009

JUDGMENT:

Assailing the order and decree, dated 20.12.2007, in M.V.O.P.No.53 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Kurnool at Adoni, whereby and whereunder, compensation of Rs.1,91,000/- with interest at 7.5% per annum was granted fastening liability on the 3rd respondent – M/s. National Insurance Company Limited, the present appeal is preferred by the Insurance Company on the main ground that the agreement between the 2nd respondent – Karnataka State Road Transport Corporation (for short, 'the Corporation') and the 1st respondent – owner of the bus makes the Corporation liable to pay the compensation in case any injury or death would occur if the bus meets with any road accident, which the Tribunal ought not to have overlooked.

Heard Sri R.K.Suri, learned counsel for the appellant, and Sri K.Rajanna, learned counsel for respondent Nos.1 to 4/claimants in the O.P. Though, respondent Nos.5 and 6, who are the owner of the offending bus and the Corporation, respectively, were served with notices, none entered appearance for them.

Learned counsel for the appellant – Insurance Company would submit that on behalf of the Insurance Company and the Corporation, R.Ws.1 and 2 were examined before the Tribunal, besides marking Exs.B1 and B2. He would also submit that Ex.B2, which is the copy of

the agreement entered into between the owner of the bus and the Corporation, expressly provides the condition of indemnifying the owner, in case any accident takes place and any persons travelling in the bus would suffer injury or death or the third party suffers injury or death and, therefore, it was not open to the Tribunal to fasten liability on the appellant. It is also his submission that hiring of the bus by the owner with the Corporation was not brought to the notice of the appellant, though the procedure prescribed mandates it. In support of his submission, he has placed reliance in the cases of **Tata Motors Ltd. (Tata Finance Ltd.) v. Kapilaben¹, New India Assurance Co. Ltd. v. Sunita², Rajasthan State Road Transport Corpn. v. Kailash Nath Kothari³, Shri Priya Vart Choudhury v. Smt. Bichitra Debnath & Ors.⁴** and the decision rendered by a learned Single Judge of this Court in **APSRTC, Depot Manager, Vizianagaram v. Chukka Durgayya⁵**.

The first four authorities relied upon by the learned counsel for the appellant would not fit to the fact-situation occurring in the instant case and, therefore, there is no need to advert to the law laid down or the legal principles that have been observed in view of the decision rendered by a Full Bench of this Court in **APSRTC v. B.Kanaka Ratnabai and others⁶** and the decisions relied upon by the learned counsel for the respondents 1 to 4— claimants.

¹ 2016 ACJ 825

² 2016 ACJ 1072

³ AIR 1997 SC 3444

⁴ AIR 2007 (NOC) 2546 (Gau.)

⁵ 2014 (2) ALD 363

⁶ 2012 Law Suit (AP) 1089

The short point involved in this case is, whether the liability fastened on the appellant - Insurance Company by the Tribunal to pay the compensation to the respondents 1 to 4, cannot be sustained in view of the agreement entered into between the owner of the offending bus and the Corporation in the present case governing the payment of compensation in case of accidents that take place resulting in either injury or death of any passenger travelling in the offending bus. The said dispute is no more *res integra* in view of the decision rendered by a Full Bench of this Court in **B.Kanaka Ratnabai**'s case (6 supra), wherein, in paragraph 88, which is relevant for the present case, it is laid down thus:

“On principle, it is not open to the Insurance Companies to absolve themselves of liability towards passengers/third party risks on the short ground that the insured vehicle has been given on hire without following the prescribed procedure. This Court in Madineni Kondaiah, 1986 AIR (AP) 62 has already held that even transfer of the ownership of an insured vehicle without following the due procedure would not absolve the Insurance Company of liability towards third party risks. Mere transfer of possession, through hire of the vehicle, cannot stand on a worse footing or exempt the Insurance Companies from liability in this regard.”

This apart, the learned counsel for the respondents 1 to 4 – claimants placed reliance on a recent decision of a learned Single Judge of this Court in **K.Jayasree v. K. Shankara Reddy**⁷, wherein a similar question involved in the present case was dealt with. In the said

⁷ 2016 ACJ 485

decision, the learned Single Judge referred to the decision of the Hon'ble Supreme Court in **Purnya Kala Devi v. State of Assam**⁸ and held that the insurer is liable to pay the compensation and directed the Insurance Company to indemnify, while allowing the appeal preferred by the APSRTC. This apart, in a recent decision of the Hon'ble Supreme Court in **Managing Director, Karnataka State Road Transport Corporation v. New India Assurance Co. Ltd.**⁹, the Hon'ble Supreme Court reiterated the law laid down earlier holding that the Insurance Company cannot absolve its liability in indemnifying the owner even in case the owner hires his vehicle with the Corporation. Thus, there is no merit in the present appeal.

Accordingly, the appeal is dismissed confirming the order and decree passed by the Tribunal. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

JUSTICE A.SHANKAR NARAYANA

25th November, 2016
v v

⁸ 2014 ACJ 1269 (SC)

⁹ (2016) 2 SCC 382