

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.4598 of 2008

JUDGMENT:

The 1st respondent KSRTC, Bangalore, represented by its chairman among the 3 respondents including owner and insurer of the hire vehicle bearing No.KA-34-4390 of the claim maintained by the mother of the deceased girl in O.P.No.49 of 2006 for Rs.1,50,000/- under Section 166 of the Motor Vehicles Act, for the death of the child in bus accident dated 27.01.2006 with the averments that the child while crossing the road, the bus due to the rash and negligent driving of the driver dashed the deceased, from which she sustained injuries and succumbed to death and after contest by the 1st respondent RTC and 3rd respondent insurer from the 2nd respondent owner remained exparte, from the evidence on record PWs.1 and 2 marked Exs.A1 to A5 and from RWs.1 and 2, Ex.B1-agreement for hire of the bus and Ex.B2-policy, the Tribunal awarded compensation of Rs.1,25,000/- with interest @ 7.5% per annum vide award dated 17.11.2007 in O.P.No.49 of 2006. Impugning the same, KSRTC maintained the appeal with the contentions that once the vehicle is insured with the 3rd respondent insurer, KSRTC is not liable to pass any award of joint liability and there is no evidence much less direct evidence as to manner of accident, so also the testimony of PW.1 claimant not even eye witness, thereby fixing joint liability and award of compensation are unsustainable.

The law is fairly settled from the expression of the Apex Court in ***Managing Director, K.S.R.T.C V. New India Assurance***

Co. Ltd¹ referring to **Uttar Pradesh State Road Transport Corporation V. Kulsum², APSRTC, Hyderabad V. B.kanakaratnabai³** showing the joint liability of the insurer, the RTC and the owner.

So far as negligence concerned, apart from the principle of **res ipsa loquitur** applies from the finder of last opportunity to the driver of the bus while the child was crossing the road even, apart from the FIR and charge sheet against the driver of the bus contents of which not in dispute by cross-examination and there is no oath against them much less against driver of the bus to rebut that evidence, what the Tribunal held of the accident was the result of negligent driving of the bus driver, no way requires interference.

In the result, the appeal is dismissed by confirming the joint liability of owner and insurer also with the RTC and if any amount is paid or deposited so far by the K.S.R.T.C and not permitted to withdraw, the RTC is entitled to take back by filing cheque petition and if permitted to withdraw; as per the agreement between the RTC and the owner of the bus, entitled to be reimbursed from the insurance company. In other respects, the award of the Tribunal holds good.

Consequently, miscellaneous petitions, if any shall stand dismissed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 08.09.2016
ska

¹ 2015 ACJ 2862

² (2011)8 SCC 142

³ 2013(1)ALD 644 (FB)