

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

M.A.C.M.A.Nos.2716 of 2007 & 469 of 2013

Between:

M.A.C.M.A.No.2716 of 2007

T. Rama Krishna

.....Appellant

and

Valluri Babu Rao and 3 others

.....Respondents

-

M.A.C.M.A.No.469 of 2013

Valluri Babu Rao

.....Appellant

and

Katta Srinivasa Rao and 3 others

.....Respondents

Date of Judgment pronounced on : 03-08-2016

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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< **GIST:**

> **HEAD NOTE:**

! Counsel for the appellants : Sri Y.V. Ravi Prasad
Sri K. Ramesh Babu

^ Counsel for the respondents : Sri Naresh Byrapaneni

? **Cases referred**

1. 2011 (8) SCC 142
2. 2013 (1) ALD 644
3. 2014 ACJ 1269
4. AIR 2003 SC 1446
5. 1997 ACJ 1148
6. AIR 1988 SC 1332
7. 2016 (2) SCC 382
8. (2001) 8 SCC 197

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.Nos.2716 of 2007 & 469 of 2013

COMMON JUDGMENT:

The two appeals arisen out of the award of the Tribunal dated 05.10.2006 passed in O.P.No.363/2006 by the District Judge-cum-Motor Accidents Claims Tribunal, Eluru, West Godavari District.

The factual matrix was that the claimant V. Babu Rao maintained the claim under Section 166 of the Motor Vehicles Act (for short 'the Act') for compensation of Rs.4,00,000/- for the injuries sustained by him in the accident taken place on 15.08.2005, at early hours near Andhakan Cheruvu, due to rash and negligent driving of the 1st respondent-K.Srinivas Rao, driver of the bus belongs to the 2nd respondent-T. Ramakrishna bearing No.AP-37-W-2346, which is insured with the 3rd respondent and under hire with the 4th respondent APSRTC by joining all of them for joint liability. The 2nd respondent owner of the bus remained exparte before the Tribunal. The 4th respondent APSRTC contested of the vehicle is insured and out of joint liability insurer to indemnify and the 1st respondent driver contested of no negligence on him apart from the vehicle is hired with APSRTC and insured with New India Assurance Company. The main contest of the

3rd respondent insurer is that the offending vehicle was plied under hire for trade and business of the 4th respondent RTC and from the negligent driving of the driver, insurer cannot be made liable. In the course of enquiry, 5 witnesses were examined including owner of the

vehicle, allegedly working as supervisor for the fish tanks of PW.5 on alleged salary of Rs.6,000/- per month and PW.1 is the claimant and PWs.2 and 4 doctors including PW.4 Government Doctor and claimed as member of the medical board in issuing Ex.A11 disability certificate of the permanent disability of 35%, petitioner is suffering from the fractures sustained. On behalf of the respondents, RW.1- P.Radhakrishna was examined and Ex.B1 policy marked and for petitioners Exs.A1 to A14 marked including Ex.A11 referred supra. It is from the above evidence on record supported by the respective pleadings supra, the Tribunal having held that the accident was the result of the rash and negligent driving of the driver of hire bus with APSRTC insured with the insurer supra, however the insurer cannot be liable but for the driver, owner and hiree-APSRTC, respondent Nos.1, 2 and 4 respectively jointly in awarding compensation of Rs.2,35,678/- with interest @ 7.5 per annum.

Impugning the same, the owner of the hired bus with APSRTC by name T.Rama Krishna supra maintained M.A.C.M.A.No.2716 of 2007 with the contentions that the APSRTC is liable vicariously and the Tribunal ought to have fixed liability on the insurer also for the vehicle is insured and thereby sought for setting aside the award of the Tribunal, while fixing joint liability in exonerating the insurer. Whereas the claimant maintained M.A.C.M.A.No.469 of 2013 with delay condonation application of the belated filing that was allowed, with the contentions in the grounds of appeal of Tribunal erred in not awarding the compensation as prayed for in restricted it to Rs.2,35,678/-, hence to allow the appeal by awarding compensation as prayed for before the Tribunal by fixing liability against the insurer also.

It is necessary to mention that in the appeal of the claimant against the respondent Nos.1, 2 and 3 i.e., driver, owner and insurer of the bus were ended in dismissal for default on 10.10.2011. In fact respondent Nos.2 and 3 are on record even in MACMA.No.2716 of 2007 and both matters taken up together for common disposal, as

arisen out of the same award and as they are represented through advocate from hearing of both sides. Thus the dismissal order against respondent Nos.1 to 3 of the appeal MACMA.No.469 of 2013 is set aside and heard the learned counsel for respondent Nos.2 and 3, owner and insurer also along with MACMA.2716 of 2007 and perused the material on record.

It is needful to mention in this context that, pursuant to the award of the Tribunal, the owner/2nd respondent to the claim petition stated paid amount to RTC from whom the claimant executed and recovered. There is no proof and definitely it could be ascertained from the record of the Tribunal to consider during execution.

Now the main issue for consideration is the quantum awarded is unsustainable, apart from exoneration of insurer is unsustainable and whether insurer also jointly be made liable from policy covered the risk otherwise.

The Apex Court in **UPSRTC Vs. Kulsum**^[1] referring to the provisions of the Act and definition of owner and the lessee of the hired vehicle will not come within the definition of owner for not a transfer of ownership within the meaning of Section 2(30) of the Act and once there is insurance and the risk is covered, the insurer has to indemnify and the requirements of intimation of change of ownership contemplated by Section 157 of the Act has no strict application for not a transfer of ownership and thereby the insurer is liable jointly with the hirer and hiree, (lessor and lessee of the bus) i.e., vehicle, owner and RTC concerned. It is following the same while resolving controversy of the conflicting expressions of this Court including of a Division Bench and on reference made, full bench of this Court in **APSRTC Vs. B. Kanakaratra Bai**^[2] held that insurer is liable to indemnify. There is an observation of RTC is not within the meaning of a owner and cannot be made liable. However there was a subsequent expression

of the Apex Court in **Purnya Kala Devi Vs. State of Assam**^[3] where in the 3 judge bench expression in was referred to the peculiar facts and particular provisions of the Act from the requisition of vehicle for election purpose held the Government which required and under control of the vehicle is liable and not the registered owner, for that vehicle was not under insurance. In fact in **Rikhi Ram & Another Vs. Sukhrania and Others**^[4], the three Judge Bench of the Apex Court on the scope of third party risk and liability of insurer observed the liability of the insurer does not cease in the absence of even intimation of transfer of vehicle to insurance company in directing the insurer to pay, however left open to recover from the insured or from the transferee. Here as referred supra the expression in Kulsum supra is very clear of the hire is different from transfer of ownership to which only Section 157 of the Act applies, which is equal to 103-A of the old Act. No doubt the Apex Court in **Rajasthan SRTC, Jaipur Vs. Kailashnath Kothari**^[5] held definition of Section 2(30) of the Act, Section 2(19) of the Old Act, of the owner is not exhaustive and it is a question of fact to decide in each case in observing even owner violate the permit for the passenger shall not suffer, the RTC was held made liable. However by the subsequent expressions including **Guru Govekar Vs. Filomena F. Lobo**^[6] law is very clear that insurance company can be made liable to indemnify. These expressions fallen for consideration in Kulsum and the same was considered in the full bench expression of Kanakaratna Bai Supra. Apart from it, this Court in MACMA.No.3229 of 2011 by scanning law in the above aspects held by fixing joint liability on the insurer to indemnify the original owner vis-à-vis the lessee-RTC for the fact that the definition of owner under Section 2(30) of the Act is not exhaustive and both are owners for the limited purpose including RTC and RTC if paid is entitled to claim from the insurer, who has to indemnify from the vehicle is under insurance, even the factum of hire with RTC is not intimated by the

owner to the insurer. In fact the latter expression of the Apex Court in *HDFC Bank limited Vs. Reshma* referred the expressions of *Kailashnath Kothari and Kulsum Supra* of the Apex Court and held that it is the owner and not financier that is made liable and it is there categorically observed even the transfer is not intimated to the insurer under Section 157 of the Act, the insurer cannot escape liability for that reason alone, having observed under hire purchase agreement or lease agreement for hypothecation is covered under Section 2(30) of the Act unless the contractual liability exists by the 2nd proviso to Section 147(1) of the Act for the insurer have liability to indemnify. Referring to this, the Apex Court in **Managing Director, KSRTC Vs. New India Assurance Co. Limited**^[7] observed of the insurer has to indemnify from the joint liability of the owner and the lessee RTC of the vehicle insured with the insurer even there is lack of intimation of the lease from the owner to the insurer and in fixing joint liability, the insurer has to indemnify.

Having regard to the above, the exoneration of the insurer by the Tribunal is unsustainable and is liable to be set aside, by fixing joint liability on the owner, APSRTC and insurer so as to recover by any payment made by the owner or RTC from the insurer for the liability to indemnify from the policy once covered the risk and not entitled to exoneration by showing otherwise.

Now coming to the quantum of compensation in dispute, the main thrust in the appeal maintained by the claimant is that the Tribunal ought to have believed the evidence of PW.5 owner under whom the injured is working, from the salary certificate Ex.A13 of he was paying Rs.6,000/- per month. There is no other proof to show he was paying Rs.6,000/- per month much less by any other record submitted. Thereby the Tribunal has not considered to give any credence to that salary certificate. The Tribunal taken the earnings by estimation as Rs.3,000/- per month by the date of accident on

15.08.2005. In fact as per **Latha Wadhwa Vs. State of Bihar**^[8] in the absence of the proof of earnings, minimum of Rs.3,000/- per month can be taken. The accident occurred was nearly 5 years after the expression. Thus it can be safely taken Rs.3,500/- per month and if such is taken into consideration, the compensation the claimant is entitled comes to $\text{Rs.3,500/-} \times (35/100) = 1225 \times 12 \times 13 = \text{Rs.1,91,000/-}$ + Rs.48,000/- towards medical bills + even awarded Rs.21,000/- towards pain and sufferance, loss of earnings, attendant and transport charges, it becomes to Rs.2,60,000/-. Accordingly the compensation of Rs.2,35,678/- is enhanced to Rs.2,60,000/-.

Accordingly and in the result, both the appeals are allowed as follows:

MACMA.No.469 of 2013 is allowed by enhancing the compensation from Rs.2,35,678/- to Rs.2,60,000/- with joint liability against all the four respondents and with no costs.

MACMA.No.2716 of 2007 is allowed by setting aside the order of the Tribunal of exoneration of the respondent No.3/insurer by fixing joint liability against all the four respondents including insurer to indemnify from the policy otherwise covered the risk so as to recover from the insurer if at all any amount paid by the owner and the RTC and for the enhanced amount from Rs.2,35,678/- to Rs.2,60,000/- to recover for any difference by the claimants from the insurer.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 03.08.2016

Note: L.R. Copy to be marked

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^[1] 2011 (8) SCC 142

^[2] 2013 (1) ALD 644

[\[3\]](#) 2014 ACJ 1269

[\[4\]](#) AIR 2003 SC 1446

[\[5\]](#) 1997 ACJ 1148

[\[6\]](#) AIR 1988 SC 1332

[\[7\]](#) 2016 (2) SCC 382

[\[8\]](#) (2001) 8 SCC 197