

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.105 of 2010

JUDGMENT:

Impugning the award of the tribunal in O.P.No.3010 of 2004 dated 06.03.2007 maintained by the injured claimant of the accident dated 15.02.2004 against the respondent-A.P.State Road Transport Corporation (for short 'APSRTC') out of the claim under Section 166 of the Motor Vehicles Act for Rs.2,00,000/- since awarded of Rs.74,800/- with interest at 7.5% p.a., the APSRTC maintained the present appeal.

2. Heard and perused the material on record.

3. The contentions in the grounds of appeal in nutshell are that the lower Court should have seen that the bus is only under hire with APSRTC and registered owner of the bus alone can be made liable if at all and not the APSRTC and the tribunal ought to have dismissed the claim for non-impleadment of owner of the bus, by name V.Devaki and the tribunal failed to see that the owner and insurer of the bus alone are responsible for payment of compensation but not the APSRTC and prayed to set aside the award.

4. In fact in the counter filed by the APSRTC, the contentions urged in the grounds of appeal were not urged. Once the bus is under hire with APSRTC, the law is fairly settled by the expression of the Apex Court in Managing Director, Karnataka State Road Transport Corporation v. New India Assurance Co. Ltd.¹ referring

¹ 2015 ACJ 2849

to HDFC Bank Ltd. v. Rishma (2015 ACJ 1 SC) and relying upon Uttar Pradesh State Road Transport Corporation v. Kulsum², that owner of the hired bus and the R.T.C. who taken the bus on hire and the insurer are jointly liable and that hiring of the bus includes with the policy.

5. Once such is the case, on payment of compensation by the APSRTC, it is entitled to recover from the insurer and owner if any by showing coverage of risk by any policy of the insurance by filing execution without need of filing fresh petition, as mere non-pleading of the parties is not a ground for dismissal of the claim but for allow to proceed against the other tort feasons in execution, as laid down by another latest three judge bench expression in Khenyel v. New India Assurance Company Limited³

6. Accordingly, the appeal is partly allowed while confirming the quantum of compensation and liability of the appellant-APSRTC to satisfy the claim of the petitioner and liberty is given to the appellant-APSRTC to proceed against the owner and insurer of the hired bus for recovery by filing execution petition. There is no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:19.10.2016
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² (2011)8 SCC 142

³ 2015(9) SCC 273