

**HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**M.A.C.M.A. No.2930 of 2009**

**JUDGMENT:**

Aggrieved by the Award dt:02.05.2002 in M.V.O.P.No.592 of 1998 passed by the Chairman, M.A.C.T-cum-IV Additional District Judge, Guntur (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 14.06.1998, the claimant boarded the bus bearing No.TN 01 N 0226 to go to Kandukur for attending his Sugarcane business and when the said bus reached Kalaparru village in the early hours on the same day, the driver drove the bus in a rash and negligent manner, due to which the bus turned turtle on the road margin for two or three times. In the resultant accident, the claimant suffered grievous injuries to his spinal cord, chest and both limbs. Immediately, he was shifted to Government General Hospital, Guntur and from there to Padmaja Nursing Home, Guntur for better treatment, where he took inpatient treatment. Both his limbs were paralysed and he was unable to stand without a support. It is averred that the accident was occurred due to rash and negligent driving by the driver of the bus. On these pleas, the claimant filed M.V.O.P.No.592 of 1998 under Sec.140 and 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 to 3, who are hirer, owner and insurer of the offending bus and claimed Rs.1,50,000/- as

compensation.

b) R.2/owner remained *ex parte*.

c) Respondent No.1 filed written statement denying all the material averments made in the claim petition and contended that there was no rash or negligence on the part of the driver of 1<sup>st</sup> respondent. Finally, it contended that the compensation claimed is excessive and prayed to dismiss the O.P.

d) Respondent No.3/Insurance Company in its counter contended that R.2 lost his right of indemnification by R.3 as he has not filed the claim form, vehicle documents and insurance particulars as per the terms of policy. It also contended that the cover note number mentioned in the petition does not tally with the cover note series of R.3. It further contended that R.2 had given full control and maintenance of the bus to R.1 and as such R.2 has nothing to do with the bus except collecting hire charges and that the R.1 is liable to pay compensation to third parties and the passengers travelled in the bus for any death or bodily injury sustained. It also contended that the driver of the bus in order to avoid direct collision with a vehicle in opposite direction coming in a rash and negligent manner, turned the bus to the extreme left but due to slippery, the tyre of the bus slipped and turned turtle. Finally, it contended that the compensation claimed is excessive and exorbitant and prayed to dismiss the O.P.

e) During trial, PWs.1 and 2 were examined and Exs.A1 to

A13 were marked on behalf of claimant. RW.1 was examined and Ex.B1 was marked on behalf of respondents.

f) The lower Tribunal considering the evidence held that the accident was occurred due to rash and negligent driving of the bus and awarded Rs.56,000/- as compensation with proportionate costs and interest @ 9% p.a by fastening liability on respondents 2 and 3 and exonerating respondent No.1.

Hence, the appeal by claimant.

3) The parties in the appeal are referred as they stood before the lower Tribunal.

4) Heard arguments of Sri Ravi Prasad, learned counsel for appellant/claimant, Sri K.Madhava Reddy, learned Standing Counsel for RTC/1<sup>st</sup> respondent and Sri M.Satish Reddy, learned counsel for respondent No.3/Insurance Company. Case against R.2 was dismissed for default vide Court Order dt:25.03.2004. However, since R.2 remained *ex parte* and suffered decree before the Tribunal, his absence in the appeal will not have any consequence in view of the decision reported in ***Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma***<sup>[1]</sup>.

5 a) Challenging the award as low, learned counsel for appellant/claimant firstly argued that the Tribunal failed to award compensation under the conventional heads like pain and suffering, attendant charges and extra nourishment charges etc.,

b) Secondly, he argued that though the Tribunal held that the petitioner suffered 30% permanent disability, it failed to award compensation for loss of future earnings by applying multiplier method but instead it granted a lump-sum of Rs.50,000/- which is quite low and inadequate. He thus prayed to allow the appeal and suitably enhance the compensation.

6) Per contra, learned counsel for respondent No.3/ Insurance Company argued that the bus in question was hired with R.1/APSRTC and in that view, under Sec.2(30) of M.V. Act, the Corporation shall be the deemed owner of the vehicle and hence the Tribunal ought to have fastened liability on R.1 also along with R.2 and R.3 but it erroneously exonerated R.1. He submitted that in a similar case, the Apex Court in a recent decision reported in ***Managing Director, Karnataka State Road Transport Corporation vs. New India Assurance Co. Ltd. And another***<sup>[2]</sup> has fixed liability on KSRTC along with owner and the insurer.

7) Learned standing counsel for R.1/RTC supported the award and prayed for dismissal of the appeal.

8) In the light of above rival arguments, the point for determination is:

*“Whether the award passed by the Tribunal is factually and legally sustainable?”*

9) **POINT**: On perusal of the material on record particularly the evidence of PW.2, I am of the considered view that the

Tribunal failed to award just and reasonable compensation. The evidence would show that the claimant suffered injuries on chest, spinal cord resulting inability of the nerves to supply blood to lower limbs and thereby the claimant is unable to move his lower limbs. As per PW.2, it is an irreversible damage and should be managed with the medicines. This is the effect of the injuries suffered by the claimant in the resultant accident. Be that it may, as rightly pointed out by the learned counsel for appellant/claimant, the Tribunal for no reason failed to award compensation for pain and suffering. It is needless to emphasize that due to the injuries, the claimant must have suffered excruciating pain, as the evidence shows that the bus turned turtle for 3 times after slipping to its left side. As such, having regard to the nature of injuries, the claimant is awarded **Rs.10,000/-** for pain and suffering.

a) Similarly, the Tribunal has not awarded compensation for extra nourishment charges and attendant expenses. The record shows that he took treatment at first in Government General Hospital, Eluru and later in Padmaja Nursing Home. So it is evident that he must have required good nourishment to recoup his health and also an attendant to look after him during his hospitalization. In such consideration, he is awarded **Rs.3,000/- each** under the above heads.

b) Then compensation for disability is concerned, the Tribunal though rightly estimated the disability of the claimant at 30% but unfortunately failed to award compensation by

following multiplier method. Instead it awarded lump sum compensation of Rs.50,000/-. In a number of occasions, it was reiterated by higher Courts that multiplier method of awarding compensation is the best method. Hence, compensation under this head needs to be reassessed. The Tribunal fixed the annual income of the claimant as Rs.15,000/- and accepted his age as 35 years. As per the decision of Apex Court in ***Smt.Sarla Verma vs. Delhi Transport Corporation***<sup>[3]</sup>, the appropriate multiplier for the persons in the age group of 31 to 35 years is '16'. So compensation for disability comes to **Rs.72,000/-** (Rs.15,000/- x 16 x 30%).

Thus the total compensation payable to the claimant under different heads is detailed as below:

|                       |               |
|-----------------------|---------------|
| For disability        | Rs. 72,000-00 |
| Medical expenditure   | Rs. 5,200-00  |
| Pain and suffering    | Rs. 10,000-00 |
| Extra nourishment and |               |
| Attendant charges     | Rs. 6,000-00  |
|                       | -----         |
| Total                 | Rs. 93,200-00 |
|                       | -----         |

So the compensation is enhanced by **Rs.37,200/-** (Rs.93,200/- minus Rs.56,000/-).

10) Then liability is concerned, the Tribunal it appears having regard to the terms under Ex.B.1—agreement between R.1 and R.2 showing that the R.2/owner shall be responsible for all the claims that may arise due to statutory violations out of the operation like claims due to accidents payable under the provisions of MV Act etc., fixed liability on the owner and insurer

i.e, R.2 and R.3 and exonerated R.1. However, in a similar case, in ***Managing Director, Karnataka State Road Transport Corporation***'s case (2 supra), Hon'ble Apex Court despite incorporation of similar conditions in the agreement between KSRTC and the owner, after considering several decisions, has treated KSRTC also as owner under Sec.2(30) of the M.V. Act, 1988 and ultimately fixed liability on KSRTC along with owner/insured and Insurance Company jointly and severally. It held as follows:

*“Para 34: In view of the aforesaid discussion, we hold that registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer.”*

The above decision clearly applies to the case on hand. Since the vehicle in question was under the hire of R.1 under Ex.B.1—agreement during the relevant period of accident, the R.1—APSRTC can also be treated as owner under Sec.2(30) of M.V. Act, 1988 apart from the original owner. Hence liability can be fastened jointly and severally on all the respondents i.e, R.1—APSRTC, R.2—the owner and R.3—the insurer. Since in clause 5(iv) of Ex.B.1—agreement it is stipulated that the owner shall be responsible for all the claims including the claims arising under the M.V. Act, R.1 will be entitled to recover the amount paid by it to the claimants, if any, from the owner or from the insurer.

11) In the result, this M.A.C.M.A, is partly allowed and ordered as follows:

(i) The compensation is enhanced by **Rs.37,200/-** (Rs.93,200/- minus Rs.56,000/-) with proportionate costs.

(ii) The enhanced compensation amount shall carry interest @ 7.5% per annum from the date of O.P, till the date of realization. Whereas, the original compensation amount shall carry interest @ 9% per annum from the date of O.P, till the date of realization.

(iii) Respondent Nos.1 to 3 in the O.P are jointly and severally liable to pay compensation and if R.1— APSRTC, paid any amount to the claimant, it is entitled to recover from the owner or insurer.

(iv) Respondents are directed to deposit the compensation amount within two(2) months from the date of this Judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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**U. DURGA PRASAD RAO, J**

Date: 03.06.2016  
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[\[1\]](#) 2001 (1) ALT 485

[\[2\]](#) 2015 ACJ 2849 (SC)

[\[3\]](#) 2009 ACJ 1298 (SC)