

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL No.2309 of 2004

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 30 of the Workmen's Compensation Act, 1923, ('the Act', for brevity), is filed by appellant/Opposite Party No.3, challenging the Order dated 20.10.2003 passed in W.C.No.20 of 2002 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kurnool, whereby the Commissioner awarded compensation of Rs.3,33,248/- to the deceased appellant and directed the appellant herein/opposite party 3 to deposit the same within 30 days from the date of receipt of the order by way of demand draft, holding that respondent No.3 is liable to pay the compensation to the workman.

2. For convenience of reference, the ranks given to the parties before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kurnool, in W.C.No.20 of 2002 will be adopted throughout this Judgment.

3. Claimant Nos. 1 and 2 are the father and mother of the deceased workman—Syed Khamruddin, who was aged 29 years and who died while in the employment under respondent No.1 as driver on a monthly wage of Rs.3,000/- per month plus batta of Rs.20/- per day on the bus bearing No.AP 21 V 2646. On the fateful day of 14.12.2001, at 4.25 AM, deceased Khamruddin was driving the bus towards Hyderabad and when the bus reached near Jedcherla, a lorry bearing No. AP 11 B 8699, being driven by its cleaner in rash and negligent manner, colluded with the bus being driven by Khamruddin, which resulted in grave injuries to

Khamruddin and later, he succumbed to injuries. On account of untimely death of Khamruddin, the Claimants/petitioners, contending that they have lost their future dependency besides loss of love and affection etc., claimed Rs.4,00,000/- as compensation against all the respondents.

4. Respondent Nos. 1 and 3 remained *ex parte*. Respondent No.2 filed Counter calling upon the claimants to put to strict proof of occurrence of the accident, the avocation of the deceased and rash and negligent driving of the cleaner of the lorry bearing No. AP 11 B 8699 and prayed for dismissal of the case under Workmen Compensation Act.

5. During enquiry, on behalf of Claimants, the first claimant was examined as AW.1 and Exs.A.1 to A.9 were marked. On behalf of Respondents, Senior Assistant working in the office of the 2nd Opposite Party was examined as RW.1 and Ex.R.1 – copy of the Insurance Policy was marked.

6. Upon hearing argument of both the counsel, the Commissioner for workmen's Compensation and Assistant Commissioner of Labour, Kurnool, held that Respondent No.3 – APSRTC is liable to pay the compensation for death of workman and, accordingly, directed it to deposit the compensation amount within 30 days by way of demand draft from the date of receipt of that Order.

7. Aggrieved by the same, Respondent No.3 filed the instant appeal contending that it is not liable to pay the compensation, but the insurance company of the crime vehicle alone is liable to pay the compensation to the claimants.

8. During hearing, the learned Standing Counsel for appellant

relied upon a decision reported in ***Managing Director, KSRTC v. New India Assurance Company Limited and another***^[1] wherein the Apex Court held that the insurance company is liable to pay compensation since its liability is statutory, but it can recover the same from the owner of the vehicle, in view of the hire agreement between second and first respondent, relying on the earlier judgment reported in ***Purnya Kala Devi v. State of Assam***^[2].

9. The only ground urged before this Court is that at best, the appellant/3rd opposite party is entitled to recover the same from the first opposite party, i.e., owner of the vehicle, and it cannot deny the liability for payment of compensation. As the issue involved in this matter is more *res integra* in view of the judgment of the Apex Court in ***Managing Director, KSRTC***'s case (1 *supra*), it is held that the owner of the vehicle, insurer of the vehicle as well as APSRTC are jointly and severally liable to pay compensation to the claimants; and the appellant/APSRTC would be entitled to recover the amount paid by it from the owner of the vehicle, in terms of the hire or lease agreement between Opposite party No.1 and Opposite party No.2.

10. Accordingly, this Civil Miscellaneous Appeal is disposed of directing Opposite party Nos.1 to 3 in W.C.No.20 of 2002 to deposit the compensation amount as stated in the W.C and later the appellant/APSRTC, would be entitled to recover the amount paid to the claimants from the owner of the vehicle in terms of the lease or hire agreement entered into with the registered owner, or from the insurer of the vehicle if the terms and conditions of lease agreement or hire agreement so permits. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 29-07-2016.

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Dt. 29-07-2016

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[\[1\]](#) 2015 (6) ALD 166 (SC)

[\[2\]](#) (2014) 14 SCC 142