HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.994 of 2012 IN/AND
M.A.C.M.A.No.372 of 2016

ORDER:

Heard the learned counsel for the appellant/KSRTC and insurer/3rd respondent in O.P.No.196 of 2007 filed by the claimant under Section 166 of the Motor Vehicle Act, for a compensation of Rs.1,00,000/- since awarded Rs.58,000/- with interest at 9% p.a. by fixing joint liability against all the respondents and directing the 1st respondent/KSRTC alone to deposit amount within 30 days and later to recover from respondents 2and 3 with proportionate liability of others. In filing the appeal, there is a delay of 10 days and the reason assigned is administrative delay. Perused the material on record.

2. For the reasons stated in the affidavit filed in support of the petition, the delay of 10 days in filing the appeal is condoned. At request, the appeal is taken up for hearing.

3. The 3rd respondent-insurer submits that there is nothing to interfere with the award of the tribunal against the contention of the learned counsel for the appellant/KSRTC.

4. The 2nd respondent-owner remained exparte before the tribunal and even impleaded in the appeal and dismissed for default, no way fatal to the maintainability of the appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma[1].**

5. In fact, 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.[2] referring to **HDFC Bank Ltd. v. Reshma (2015 ACJ 1 SC)** and relying upon **Uttar Pradesh State Road Transport Corporation v. Kulsum**[3]**,** 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.

6. Having regard to the above, though the tribunal is right in fixing joint liability went wrong in directing the RTC alone to deposit and recover proportionately as it is for the insurer once the policy covers the risk for nothing to show any violations to satisfy the claim.

7. Accordingly, the appeal is allowed directing the insurer to indemnify and satisfy the claim and any amount paid or deposited by the RTC is entitled to recover from insurer or claim back by RTC by filing cheque petition, if not withdrawn by the claimants. There is no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04-02-2016
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[1] **(2001 (1) ALT 495)**

[2] 2015 ACJ 2849

[3] (2011)8 SCC 142