

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.1480 of 2011

IN/AND

M.A.C.M.A No.1138 of 2016

JUDGMENT:

Heard. The delay of 30 days in filing the appeal is condoned.

2. Heard learned counsel for the appellants/RTC and the counsel for the 5th respondent-insurance company. Among Respondents 1 to 4; 1 and 2 are the claimants and 3 and 4 are Driver and owner of hired bus. Since the 2nd claimant is minor, it is represented by 1st claimant and the appeal is dismissed for default against respondents 1, 2 and 4. R.3 serviced failed to attend.

3. So far as the 4th respondent-owner of the bus is concerned, having been remained *ex parte*, impleaded in the appeal, the appeal against him was dismissed for default, which is no way fatal vide expression of the Hon'ble Apex Court reported in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma And others**^[1]. The appeal is taken up for hearing.

4. It is the submission of learned counsel for the appellants (RTC) that the appellants are not impugning the quantum awarded by the Tribunal in favour of the claimants and it is only a dispute among the insurance company, owner and RTC in fixing the liability on the RTC by exonerating the insurance company. Thus, the appeal is maintainable even the appeal is dismissed for default against respondents 1, 2 and 4.

5. Heard and perused the material on record.

6. The Tribunal fixed the liability insofar as A.P.S.R.T.C as per Section 2 (30) of the Motor Vehicles Act, 1988 by referring to the expression of the Hon'ble Apex Court in **Rajasthan State Road**

Transport Corporation V. Kailash Nath Kothari^[2], that was placed reliance by the Division Bench of this Court in **Branch Manager, Oriental Insurance Company Limited V. Javvaji Bhaskar Rao**^[3]. In fact, the law is fairly settled after the expression of the Hon'ble Apex Court in **Uttar Pradesh State Road Transport Corporation Vs. Kulsum**^[4] wherein it is categorically observed that once there is a provision under the Motor Vehicles Act and what Section 157 of the Act speaks of intimation within prescribed time from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour is for transfer of ownership and not for hire and the same is followed by Full Bench decision of this Court in **APSRTC, Hyderabad V. B.Kanakaratnabai**^[5]. The recent expression in this regard in **Managing Director, K.S.R.T.C. & Others V. New India Assurance Company Ltd and others**^[6], wherein it is held that all the owners of hired RTC buses, the RTC and the insurer are jointly liable as what is transferred while hiring the vehicle is with policy of the vehicle and thereby insurer cannot be exonerated.

7. In the result, the appeal is partly allowed fixing the liability of hired bus owner and insurer also along with the RTC for the insurer to indemnify them and pay to the claimants and if any amount paid or deposited so far by the A.P.S.R.T.C and not permitted to withdraw, entitled to take back by filing cheque petition and if permitted to withdraw, entitled to be reimbursed from the insurance company. In all other respects, the award of the Tribunal holds good. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

JANUARY 21, 2016

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Date: 21.01.2016

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[\[1\]](#) 2002 ACJ 828

[\[2\]](#) AIR 1997 SC 3444)

[\[3\]](#) 2009 (2) ALT 512

[\[4\]](#) (2011) 8 SCC 142

[\[5\]](#) 2013(1)ALD 644 (FB)

[\[6\]](#) 2015 (4) CCC 375 (SC)