

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.4973 of 2011 IN/AND
M.A.C.M.A.No.718 of 2016

ORDER:

Heard the learned counsel for the appellant/APSRTC and insurer/3rd respondent in O.P.No.134 of 2007 filed by the claimant under Section 166 of the Motor Vehicle Act, for a compensation of Rs.4,50,000/- since awarded Rs.2,50,000/- with interest at 7.5% p.a. by fixing liability against the APSRTC only. In filing the appeal, there is a delay of 191 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 191 days in filing the appeal is condoned. At request, the appeal is taken up for hearing.

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

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, the tribunal went wrong in fixing liability against RTC alone and 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 partly allowed by modifying the liability fastened against the RTC into joint liability of owner, hiree of the bus and insurer. It is for the insurer to indemnify and satisfy the award passed by the tribunal. If 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paid or deposited by the RTC is entitled to recover from insurer or claim back by RTC by filing cheque petition, if not withdrawn by the claimant. There is no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:12-02-2016

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^[1] (2001 (1) ALT 495)

^[2] 2015 ACJ 2849

^[3] (2011)8 SCC 142