

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1037 of 2010

JUDGMENT:

This appeal is arising out of the order and decree dated 13.11.2009 passed in O.P.No.294 of 2003 on the file of the Motor Accident Claims Tribunal-cum-IV Additional District and Sessions Court (F.T.C.) at Mahabubnagar.

2. On 05.06.2003, at about 9:00 PM, while the deceased Chand Pasha, along with one Ghouse, was proceeding on scooter bearing No.AP-22A-5677 from painting shop towards Chowrastha on business purpose, one bus bearing No.AP-22-U-1119 coming in opposite direction from Hyderabad to Kurnool, driven by its driver in a rash and negligent manner, dashed against the scooter. As a result, Chand Pasha fell down and received grievous injuries and succumbed to injuries while being shifted to Government Hospital, Kurnool. The Police, Kothakota registered a case in Crime No.75 of 2003 for the offence under Section 304-A and 337 IPC against the driver of the offending bus. Alleging that the accident occurred due to the rash and negligent driving by the driver of the offending bus, and stating that the deceased was 25 years old by the date of accident and a Painter by profession, and was earning Rs.10,000/- per month, the wife of the deceased filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.3,00,000/- against respondents 1, 2 and 3, the owner, insurer and hirer of the offending bus.

3. The 1st respondent-owner of the bus remained ex parte. The 2nd respondent-insurance company filed counter denying the allegations in the claim petition and also denied their liability. The 3rd respondent-APSRTC is the hirer of the offending bus. The APSRTC has filed counter contending that the 1st respondent is the

owner of the bus and the driver of the said bus was employed by the owner, and, as per Condition No.5(iv) of the Agreement entered into between the owner and hirer, the owner shall be responsible for all claims that may arise due to violations under the Motor Vehicles Act, 1988, and, therefore, sought for dismissal of the petition against the 3rd respondent.

4. The Tribunal, on consideration of the evidence, awarded compensation of Rs.2,21,500/- with interest @ 6% per annum from the date of petition till the date of realization and dismissed the claim petition against the 3rd respondent-APSRTC and held the respondents 1 and 2 jointly and severally liable to pay compensation. Aggrieved by the order passed by the Tribunal, the 2nd respondent-New India Assurance Company Limited preferred this appeal.

5. Heard the arguments of learned Standing Counsel Smt.A.Jayanthi, for the appellant-insurance company, and the learned counsel Sri Bhuvan Sunder Reddy, for the claimant-respondent No.1 herein. None appeared on behalf of respondent Nos.2 and 3 inspite of service of notice.

6. Learned Standing Counsel for the insurance company submits that the Tribunal went wrong in fixing liability on the appellant, and exonerating the liability of APSRTC, though the crime vehicle involved in accident was hired with APSRTC and the driver was under the control of the APSRTC. It is further submitted that the APSRTC has not paid additional premium for hiring bus and, therefore, there is no coverage of insurance, as such, the insurer is not liable to pay any compensation in this matter.

7. Learned Counsel for appellant placed reliance on the decision in **Oriental Insurance Company Limited v. Javvaji Bhaskar Rao**¹, wherein it was held in paragraph No.10 as follows:

“10. There is no dispute that though appellant insured the offending bus, it was on hire to APSRTC. There is also no dispute that the bus was put to schedule as per the trip sheet fixed by concerned APSRTC officials and the driver was under the control of hirer. In such a case, APSRTC alone would be liable to pay compensation. In that view of the matter, the appellant cannot be made jointly and severally liable to pay award sum. If so advised, first respondent may proceed against APSRTC and recover entire amount awarded.”

8. Learned Standing Counsel for the appellant has also placed reliance in **New India Assurance Company Limited v. V. Ramachandra Naidu**², wherein it was held in paragraph Nos.14 and 15 as follows:

“14. Further Chapter XI of the new Act provides for compulsory insurance of the vehicles against 3rd party risks. It was in compliance with this, that the 3rd respondent insured his vehicle with the appellant. Even assuming that there can be registered owner as well as an owner under an agreement of lease in respect of the same vehicle, the new Act does not provide for taking out of insurance coverages by both of them independently, A policy coverage taken by one would cover the liability.

15. If the contention of the appellant is to be accepted, the owner and insurer of a taxi vehicle can plead that they are not liable in the event of an accident taking place, when the vehicle is under hire. With impunity, they can plead that it is the person who hired the vehicle either for a short period or a longer duration that is liable to compensate for the death or injuries caused due to accidents. Similarly, the owner of a goods vehicle and its insurer can plead that the liability to pay the compensation arising out of an accident involving the vehicle, has to be met by the person or agency whose goods are being transported. This is not the purport of the Motor

¹ 2009 (3) ALD 53

² 2004 (5) ALD 378

Vehicles Act or the concept of insurance against third party risk. The possibility of such interpretations is ruled under the new Act. Such a course of action would defeat the very purpose of enactment of the relevant provisions, to cover third party risks. Hence, this Court is not inclined to interfere with the order under appeal, “

9. Learned Standing Counsel has also placed reliance on a decision in **Rajasthan State Road Transport Corporation v. Kailash Nath Kothari**³, wherein it was held in paragraph 17 as under:

“17. The definition of owner under Section 2(9) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of 'owner' to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of liability in case of an accident. The liability of the "owner" is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. In this case, Shri Sanjay Kumar, the owner of the bus could not ply the bus on the particular route for which he had no permit and he in fact was not plying the bus on that route. The services of the driver were transferred along with complete 'control' to RSRTC, under whose directions, instructions and command the driver was to ply or not to ply the ill fated bus on the fateful day. The passengers were being carried by RSRTC on receiving fare from them. Shri Sanjay Kumar was therefore not concerned with the passengers travelling in that bus on the particular route on payment of fare to RSRTC. Driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of RSRTC for operation of the bus. So far as the passengers of the ill fated bus are concerned, their privity of contract was only with the RSRTC to whom they had paid the fare for travelling in that bus and their safety therefore became

³ AIR 1997 SUPREME COURT 3444(1)

the responsibility of the RSRTC while travelling in the bus. They had no privity of contract with Shri Sanjay Kumar, the owner of the bus at all. Had it been a case only of transfer of services of the driver and not of transfer of control of the driver from the owner to RSRTC, the matter may have been some what different. But on facts in this case and in view of conditions 4 to 7 of the agreement (supra), the RSRTC must be held to be vicariously liable for the tort committed by the driver while plying the bus under contract of the RSRTC. The general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the concerned employee during the course of his employment and within the scope of his authority, is a rebuttable presumption, of the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be must be held vicariously liable for the tort committed by the concerned employee in the course of his employment while under the command and control of the hirer not withstanding the fact that the driver would continue to be on the pay roll of the original owner. The proposition based on the general principle as noticed above is adequately rebutted in this case not only on the basis of the evidence led by the parties but also on the basis of conditions 6 and 7 (supra), which go to show that the owner had not merely transferred the services of the driver to the RSRTC but actual control and the driver was to act under the instructions, control and command of the conductor and other officers of the RSRTC.

18. Reliance placed by learned counsel or the appellant on condition No.15 of the agreement (supra) in our view is misconceived. Apart from the fact that this clause in the agreement between the owner and the RSRTC, to the extent it shifts the liability for the accident from the RSRTC to the owner, may be against the public policy as opined by the High Court, though we are not inclined to test the correctness of that proposition of law because on facts, we find that RSRTC cannot escape its liability to pay compensation. The second part of condition No.15 makes it abundantly clear that the RSRTC did not completely shift the liability to the owner of the bus because it provided for reimbursement to it in case it has to pay compensation arising out of an accident. The words

"if the Corporation is required to make any payment or incur any expenses through some Court or under some mutual compromise, the Corporation shall be able to recover such amounts from the owner of the bus after deducting the same from the amounts payable to him in the later part of condition No.15 leave no ambiguity in that behalf and clearly go to show the intention of the parties. Thus, RSRTC cannot escape its liability under condition No.15 of the agreement either. Thus, both on facts and in law the liability to pay compensation for the accident must fall on the RSRTC.

in the later part of condition No.15 leave no ambiguity in that behalf and clearly go to show the intention of the parties. Thus, RSRTC cannot escape its liability under condition No.15 of the agreement either. Thus, both on facts and in law the liability to pay compensation for the accident must fall on the RSRTC."

10. Learned Standing Counsel for the insurance company, placing reliance on the above judgments, submitted that the insurer has no liability to pay compensation as the owner of the vehicle is APSRTC who has hired the vehicle and, therefore, the APSRTC is only liable to pay compensation and not the insurance company.

11. In the light of the facts and circumstances of the case, it would be appropriate to refer to the findings given by the Tribunal while exonerating the APSRTC. The Tribunal has discussed that aspect which reads as follows:

"Respondent No.2 is examined RW-1 and marked Ex.B-1. According to RW-1, the owner has not paid separate premium before hiring the bus to APSRTC. Hence, the respondent company is not liable to pay the compensation to the petitioner. Per contra, Respondent No.3 examined RW-2 and also filed Ex.B-2. It is also evident in the evidence of RW-2 that as per the terms and conditions entered into between APSRTC and Owner of the bus i.e., Respondent No.3 and Respondent No.1, if any claim under Motor Vehicles Act arises only the owner is liable to pay compensation to the petitioner. Even, as seen from the agreement, the same is evident. Since, the policy was in force at the time of accident and according to

Ex.B-2, if any claim arises, only the owner is liable. Hence, it is concluded that in this case, only the owner as well as insurer are jointly and severally liable to pay compensation to the petitioner, as the vehicle was fully insured at the time of accident. Therefore, the claim against respondent No.3 is dismissed, and only respondents No.1 and 2 are jointly and severally liable to pay compensation to the petitioner, as the policy was in force at the time of accident.”

12. In view of the clear and categorical findings of the Tribunal since the owner has insured the vehicle with the appellant-insurer and there being a clause in the Agreement entered into between the Owner and the APSRTC as per Ex.B.2, if any claim arises, only the owner will be liable to pay compensation, which should be indemnified by the appellant-insurer. Therefore, in the light of the foregoing reasons, I do not see any reason to interfere with the judgment of the Tribunal in holding the liability against the respondents 1 and 2, and dismissing the claim against respondent No.3.

13. **IN THE RESULT**, the appeal is dismissed, confirming the judgment and decree dated 13.11.2009 passed by the Tribunal in O.P.No.294 of 2003. The appellant is directed to deposit the compensation amount within one month from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the amount. No costs. Miscellaneous Petitions, if any pending, shall also stand dismissed.

GUDISEVA SHYAM PRASAD, J

30th November, 2017

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A. No. 1037 of 2010

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