

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.Nos.2230/ 2009 & 2371/ 2013

COMMON JUDGMENT:

These two appeals, which arose out of the same award, dated 24.11.2007 on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum- I Additional District Judge, Chittoor (for short "the Tribunal") are disposed of by this common judgment.

The brief facts of the case are that the claimant is a minor girl and she sustained injuries in a road accident that occurred on 02.01.2004 at 4 p.m near Kalavagunta village at Chittoor-Penumur road, when she was in front of the house, the RTC bus bearing registration No.AP-03-U-3929 came in a rash and negligent manner and dashed the injured girl, due to which, she sustained multiple injuries. The injured was aged 4 years girl by the time of accident.

Respondents filed counters denying their liability stating that since the bus was under hire to the RTC, the owner of the bus and RTC are liable to pay compensation.

On behalf of the claimants, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.7 and Ex.X1. On behalf of the respondents, no oral or documentary evidence was adduced.

The Tribunal, vide judgment dated 24.11.2007, held that the claimant who was minor, represented by guardian, is entitled to compensation of Rs.1,21,000/- for the injuries sustained by the injured girl in the accident. No appeal has been filed on behalf of the claimant. The admitted fact is that the offending bus was owned by the 1st respondent, insured by the 2nd respondent and hired with the 3rd respondent in OP.

Neither the insurance company nor the RTC questioned the quantum of compensation, nor is it in issue that the accident was due to rashness or negligent act on the part of the driver of the offending bus. The only question that arises for consideration in these appeals is as to who are liable to pay compensation.

The Insurance Company contended that the accident took place involving the bus, which was hired by the State Road Transport Corporation and owned by the 1st respondent and hence the insurance company is not liable to pay compensation. Even though there was conflict of decisions on the aspect as to whether in the case of a bus hired by RTC, as to who is liable to pay the compensation, that controversy is set at rest by a recent judgment of the Supreme Court in *Managing Director, KSRTC v. New India Assurance Co.Ltd.*¹ wherein the Supreme Court at para-34, laid down as under:

“34. In view of the aforesaid discussion, we hold that registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and the KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer.”

In view of the above decision of the Supreme Court, the contention of the insurance company that since the offending vehicle was hired by RTC, the insurance company is not liable to pay compensation cannot be sustained. In an accident involving a bus hired by RTC, the State Road Transport Corporation, the owner of the vehicle and the insurance company are jointly and severally liable to pay the compensation, as has been held by the Supreme Court in the decision referred to supra.

¹ 2015 (6) ALD 166 (SC)

Following the above authority, it is held that respondents Nos.1 to 3 are jointly and severally held liable to pay the compensation and as held by the Supreme Court in the above decision, it is open to the RTC to recover the said amount from the 1st respondent-owner and 2nd respondent-insurer in terms of the agreement.

In the result, these two MACMAs are disposed of, while confirming the award of the Tribunal and fixing the liability on all respondents in OP jointly and severally. The appellants in both the appeals shall deposit the compensation amount together with interest and proportionate costs within a period of two months from today. The claimant is entitled to withdraw the amount, as and when deposited, as directed by the Tribunal, without furnishing any security. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 30.06.2017
Dsr

M.S.K.JAI SWAL,J

