

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

MACMA.616 OF 2006

ORDER:

Second respondent Insurance Company in O.P.No.2103 of 2003, on the file of the Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Addl. Family Court-cum-XXIII Addl. Chief Judge, Red Hills, Nampally at Hyderabad, is the appellant in the present appeal filed under Section 173 of the Motor Vehicles Act, 1988.

2. Heard Sri V.Srimannarayana, learned counsel for the appellant on record, Sri Jameel Ahmed Ansari for R.1 and Sri N.Vasudeva Reddy for R.3 apart from perusing the material available before the Court.

3. In an accident that took place on 12.05.2003, the first respondent herein sustained injuries. Claiming compensation of Rs.3,00,000/- the first respondent herein approached the Tribunal under the provisions of Section 166 of the Motor Vehicles Act, 1988. In the said O.P the owner of the vehicle remained absent and was set *ex parte*. Second respondent/Insurance Company and the State Road Transport Corporation contested the O.P by filing counter.

4. On the basis of the pleadings available, the Tribunal framed the following issues for consideration:

1. Whether the accident in question took place on 12.5.2003 at about 9.00 p.m. due to rash and negligent driving of the driver of the RTC bus bearing No.AP22T8025?
2. Whether the petitioner is entitled to the compensation, if so, to what amount and from whom?
3. To what relief?

5. While answering Issue No.1, the Tribunal categorically held that the accident took place due to the rash and negligent driving of the driver of the offending vehicle. Eventually, the Tribunal by way of an award, which is impugned in the present appeal passed on 23.12.2005, partly allowed the O.P awarding a sum of Rs.1,91,000/- and interest @ 6% per annum from the date of petition till the realisation while making respondents 1 and 2 jointly and severally liable.

6. In the present appeal filed under Section 173 of the Motor Vehicles Act, reiterating the grounds of appeal, it is the submission of the learned counsel for the Insurance Company that the State Road Transport Corporation should also have been made jointly and severally liable to pay the compensation amount.

7. Resisting the said contention, the learned counsel for the claimant/first respondent herein placed on record, the judgment of the Full Bench of this Court in *APSRTC, HYDERABAD AND ANOTHER v. B.KANAKARATANABAI AND OTHERS*¹. In the said Judgement at paragraph 85, this Court held as follows:

“85. On the above analysis, we hold that mere hiring of insured buses by the owner to the APSRTC would not in any manner limit the liability and accountability of the Insurance Companies, be it under the Act of 1988 or the Act of 1939, to honour passengers/third party risks covered by the Insurance Policies issued by them in favour of the owners. Notwithstanding the hiring of insured buses by the owners to the APSRTC, the Insurance Companies shall be solely and exclusively liable for payment of the compensation arising out of such passengers/third party claims unless any of the grounds in Section 149 (2) of the Act of 1988/Section 96 (2) of the Act of 1939 are made out. We therefore affirm the

¹ 2013 (1) ALD 644 (FB)

view taken by the Full Bench of this Court in Madineni Kondaiah's case (supra), which was approved and upheld by the Supreme Court in G.Govindan's case (supras) and applied thereafter in Rikhi Ram's case (supra). We answer the question referred to use for decision accordingly. All the matter shall be placed before the appropriate Courts for individual adjudication."

8. On the other hand, the judgment of the Hon'ble Apex Court in *NEW INDIA ASSURANCE COMPANY LIMITED AND ANOTHER v. MANAGING DIRECTOR, KARNATANA STATE ROAD TRANSPORT CORPORATION AND ANOTHER*² 2016 (2) SCC 382 is placed on record and paragraph 35 of the judgment reads as under:

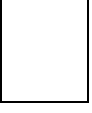
"35. In view of the aforesaid discussion, we hold that registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and the KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover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

9. In view of the judgment in *NEW INDIA ASSURANCE COMPANY LIMITED AND ANOTHER (supra 2)* and for the reasons recorded therein, this appeal stands disposed of in accordance with the said Judgment. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 12.12.2017
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² (2016) 2 SCC 382



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Dated: 12.12.2017

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