

THE HON'BLE SRI JUSTICE N. BALAYOGI

M.A. C.M.A. No.2254 of 2009

JUDGMENT :

The appellant/Respondent No.4/Insurance Company aggrieved by the Award and Decree dated 24.2.2007 in O.P.No.1656 of 2005 on the file of XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge, Hyderabad, preferred this appeal besides other grounds on the ground that the Tribunal erred in fastening the liability on the appellant and respondents – APSRTC and the owner of the bus at the time of the accident and should have exonerated the liability of the appellant.

On the other hand, the respondent No.1/claimant contended that the Tribunal having considered the provisions on record awarded the compensation, which is legal.

The claim of the claimant is that the deceased was aged about 65 years and drawing Rs.3,000/- by way of pension. While so, on 16.5.2005 at about 1.30 PM the deceased met with an accident, when the RTC bus bearing No.AP 5 X 6744 driven by its driver in a rash and negligent manner, resulting in the death on the spot.

The Tribunal, having considered the plea of both parties, settled the following issues for trial :

1. Whether the accident occurred due to rash and negligent driving of the driver of APSRTC (Hired) Bus belonging to Respondent No.3 bearing Regn.No.AP 5 X 6744 on 16.5.2005 at Puranapool Darwaza, Hyderabad, resulting in the death of deceased-Smt.P.Satyamma?
2. Whether the petitioner is entitled for any compensation, if so, the quantum and from whom?
3. To what relief?

In support of the claimant, P.Ws.1 and 2 are examined and Exs.A1 to A6 are got marked, but respondents in O.P. did not choose to adduce any evidence except 4th respondent exhibiting Ex.B1 - copy of insurance policy by consent.

In the appeal, the appellant/insurance company did not question the finding of rash and negligence, but it is only questioning the liability of the appellant/insurance company. From the evidence of P.W.1 it is well established that the deceased Satyamma was a retired government employee and getting pension of Rs.3,116/- per month and contributing the same to the family. The Tribunal, having considered that the claimant being the son of deceased Satyamma, find that he loses love and affection. Therefore, the Tribunal granted Rs.45,000/- to the claimant under the head love and affection. Besides that, the Tribunal has also granted Rs.2,500/- each towards transportation and funeral expenses. Thus, in total, the Tribunal has granted Rs.50,000/- towards compensation.

Admittedly, the respondents 1 and 2 in O.P. are representing the RTC, whereas respondent No.3 is the owner/insured and the 4th respondent is the insurer of the offending bus. The undisputed clear finding is that the accident was occurred due to rash and negligent driving of the driver of the RTC bus.

In fact, as on the date of the accident, the offending bus was on hire with RTC – respondents 1 and 2 in O.P. The 3rd respondent insured the bus with the 4th respondent under Ex.B1 – policy, which is in force as on the date of the accident. The Tribunal, having considered the decision laid down in *K.Madhurabai and Others v. Shiva Nageshwar Rao and Others*¹ and the decision of this Court laid down in *Miryalaguda v. P.Sujatha and Others*² in which the decision of the Supreme Court in *Rajasthan State Transport Corporation v. Kailash Nath Kothari*³ was followed, find that all respondents are jointly and severally liable to pay compensation awarded.

In a recent decision in the case of *Managing Director, KSRTC v. New India Assurance Co. Ltd.*⁴ the Apex Court held that the registered owner, insurer as well as KSRTC are liable to make the payment of compensation jointly and severally to the claimants and KSRTC in terms of 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.

¹ 2004(3) ALD 658

² 2003(5) ALD 586

³ AIR 1997 SC 3444

⁴ 2015 (6) ALD 166 (SC)

As per Section 147 of the Motor Vehicles Act no vehicle can be driven without insurance. It is the statutory liability of the owner to provide the comprehensive insurance covers for all kinds of accidents to passengers, other persons and property. Hiring of public service vehicles is not prohibited under any of the provisions of the aforesaid laws. It is not the contention of the insurer that any of the provisions contained in the insurance policy has been violated. It is the liability of the registered owner of the bus to provide the bus regularly, to employ a driver, to make the payment of salary to the driver and the driver should be duly licensed and not disqualified as provided in the agreement though buses were to be plied on the routes as specified by the KSRTC and hiring charges were required to be paid to the registered owner. In the absence of any stipulation prohibiting such an arrangement in the insurance policy and in view of agreement of lease between the registered owner and the hired, the insurer/appellant cannot escape the liability. Their Lordships further held that the KSRTC being in actual control of the vehicle would also be liable to make the compensation, however, it can recover the amount from the registered owner or insurer, as the case may be.

Therefore, the insurance company is liable to pay the compensation. There is no error or irregularity in the Award. The Award does not suffer from any legal irregularities warranting interference.

In the result, the appeal is dismissed while confirming the Award and Decree dated 24.2.2007 in O.P.No.1656 of 2005 on the file of XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge, Hyderabad.

During the course of arguments it is reported that 50% of the amount was already deposited. Hence, the respondents 1 to 4 in O.P. are directed to deposit the compensation amount, after deducting the amount already deposited, along with accrued interest and costs within one month from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same.

Advocate fee is fixed at Rs.2,000/-.

Consequently, miscellaneous petitions pending in this matter, if any, shall stand closed.



JUSTICE N.BALAYOGI

27th October, 2017

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