

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.17826 OF 2007

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“to issue a writ, order or direction more in the nature of writ of mandamus declaring the action of the Respondent No.2 in issuing the impugned order No.P2/785(5)/2006-MTM, dated 11.4.2007 recovering an amount of Rs.1,22,000/- with interest of Rs.12.961/- costs of the Rs. 1792/- from the amount of Hire Charges due and payable to the petitioner herein by the Respondents No. 1 and 2 as illegal, void, without authority and opposed to the principles of natural justice and consequentially to direct the Respondents No. 1 and 2 to pay the amount withheld with interest at the rate of 18% per annum from the date of the impugned order till the date of payment by the Respondents No. 1 and 2 to the petitioner and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. I have heard the submissions of Sri P.V.Mahesh, learned counsel for the petitioner, and of Sri Naresh Byrapaneni, learned Standing Counsel appearing for the 3rd respondent Insurance Company.

3. There is no representation for the respondents 1 and 2.

4. The admitted facts, as discernible from the pleadings and submissions made before this Court, in brief, are as follows:

Certain claimants filed M.V.O.P.No.452 of 2005 before the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Krishna, Machilipatnam, against one Gullapalli Ramu, the writ petitioner, and the respondents 1 and 3 in the writ petition claiming a compensation of Rs.2,00,000/- with interest and costs. The Tribunal partly allowed the said claim petition and awarded a compensation of Rs.1,22,000/- (Rupees one lakh twenty two thousand only) to the 1st claimant therein recoverable with

interest at 7.5% per annum from the date of the claim petition till the date of realization from the respondents 1 to 4 therein jointly and severally. Thus, by the award passed by the Tribunal, liability to pay compensation was fastened jointly and severally upon the writ petitioner and the respondents 1 and 3 herein. Thereafter, the Depot Manager, Machilipatnam i.e., the 2nd respondent herein passed an office order, dated 11.04.2007, for recovery of the decretal amount of Rs.1,22,000/- with interest thereon from the hire charges payable to the writ petitioner because the writ petitioner is the owner of the hired bus, which was involved in the accident. Aggrieved thereof, the writ petitioner, who is the owner of the bus which was given on hire to the A.P.S.R.T.C., filed this petition and assailed the said office order passed by the 2nd respondent.

5. At the hearing, learned counsel for the writ petitioner brought to the notice of this Court a decision of the Supreme Court in **U.P. State Road Transport Corporation v. Kulsum and others**¹ in support of the proposition that the liability to pay compensation in a matter of this nature is that of the insurance company and that such liability of the insurance company is exclusive and absolute. In that view of the matter and in the light of the settled legal position, the writ petitioner, who is the owner of the bus which was given on hire to the A.P.S.R.T.C., is not liable to pay any compensation as per the award of the Tribunal referred to supra, as the liability is exclusively and absolutely upon the 3rd respondent - Insurance Company to pay the compensation to the

¹ 2011 ACJ 2145

1st claimant as per the said award of the Tribunal in M.V.O.P.No.452 of 2005.

6. Learned Standing Counsel appearing for the 3rd respondent – Insurance Company has not disputed the facts and legal position as laid down in the afore-stated decision of the Supreme Court.

7. It is represented that the writ petitioner has so far not paid any compensation amount to the 1st claimant as per the award passed by the Tribunal.

8. On the above analysis, this Court finds that the order impugned passed by the 2nd respondent is liable to be set aside and the writ petition deserves to be allowed.

9. In the result, the Writ Petition is allowed as prayed for. It is made clear that liberty is reserved to the respondents 1 and 2 to recover any compensation paid under the award, dated 22.12.2006, in M.V.O.P.No.452 of 2005 on the file of the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Krishna, Machilipatnam from the 3rd respondent – Insurance Company as per the ratio in the decision of the Supreme Court referred to supra, however, by following the procedure established by law. As a sequel to this order, the respondents 1 and 2 are directed to pay the withheld hire charges to the writ petitioner forthwith and at any rate not later than two (2) weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE M.SEETHARAMA MURTI

Date: 08.06.2018
AMD

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