

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 959 OF 2010

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M.A.C.M.A. No. 371 OF 2011

COMMON JUDGMENT:

The appellants, who are the respondents 2 and 3, filed these appeals under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award and decree dated 07.01.2009 passed in M.V.O.P.No.558 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati, whereby the Tribunal granted compensation of Rs.2,94,856/- with proportionate costs and interest @ 7.5% per annum against the claim of Rs.4 lakhs on account of death of Sri G.Edukondalu (hereinafter referred to as 'the deceased') in the accident occurred on 15.08.2007.

2. For the sake of convenience, the parties in the present appeals are called as they were arrayed before the Tribunal.

3. The 1st claimant is the wife and the claimants 2 and 3 are the minor children of the deceased. They filed the claim petition under Section 163-A of the M.V. Act, 1988 read with Rule 455 of the A.P.M.V. Rules, 1989, claiming compensation of Rs.4 lakhs under various heads, alleging that the deceased died in the accident occurred on 15.08.2007 due to rash and negligent driving of the driver of the offending vehicle i.e., bus bearing No.AP03V 3303 belonging to the 1st respondent, hired

with the 3rd respondent and insured with the 2nd respondent. It is further stated that the deceased was hale and healthy prior to the accident and he was aged about 36 years at the time of accident and was earning Rs.200/- per day as an agriculturist and a coolie.

4. The respondents filed their respective counters before the Tribunal denying the averments of the claim petition, but it is accepted that the offending vehicle was hired to the 3rd respondent and insured with the 2nd respondent for the period from 19.06.2007 to 18.09.2007. The driver is having valid driving licence. The offending bus was under the control of 3rd respondent at the time of accident.

The 3rd respondent specifically pleaded that as per clause 5 (iv) of the terms and conditions of hire agreement, the owner of the vehicle is liable to pay all claims and he is also liable to pay compensation that may be awarded by the Motor Accidents Claims Tribunal. Hence, the 3rd respondent is not liable to pay any compensation to the claimants.

5. Based on the pleadings, the Tribunal framed the following issues:

- 1) Whether the deceased G.Edukondalu died due to accident arising out of the use of a bus bearing Regn.No.AP 03 V 3303 belonging to the first respondent given hired to third respondent?
- 2) Whether the bus in question belongs to the first respondent and stood insured with the second

respondent by the date of the accident and if so, whether policy covers the risk of the deceased?

3) Whether the petitioners are the legal representatives of the deceased and if so, to what amount and from which of the respondents?

4) To what relief?

6. During the course of trial, the Tribunal examined PWs 1 to 3 and RW1 and marked Exs.A.1 to A.4 and B.1 and B.2.

7. Based on the evidence of PWs 1 and 2 and Exs.A.1 to A.3, the Tribunal came to the conclusion that the accident had occurred due to rash and negligent driving of the driver of the offending vehicle i.e., bus bearing No.AP03V 3303. There is no contrary evidence to dispute the same before the Tribunal and the same is not seriously disputed by the respondents in these appeals.

8. The Tribunal, based on the evidence available on record, granted compensation of Rs.2,94,856/- with proportionate costs and interest @ 7.5% per annum under various heads having taken the annual income of the deceased as Rs.23,423/- as per G.O.Ms.No.33, Labour, Employment, Training and Factories (Lab.II), dated 17.07.2004 w.e.f. 07.08.2004 issued under Minimum Wages Act. The Tribunal also held that the respondents are jointly and severally liable to pay the compensation amount.

9. Disputing their liability to pay compensation, the 2nd respondent - insurer filed MACMA No.371 of 2011 and the 3rd respondent – hirer filed MACMA No.959 of 2010.

10. The question involved in these appeals are – whether in the wake of hire agreement entered into by the registered owner with APSRTC, the registered owner and insurer along with APSRTC can be fastened with liability to make payment to the claimants and whether APSRTC can recover the amount from the registered owner and its entitlement to seek indemnification from the insurer?

11. It is not in dispute that the offending vehicle was hired to the 3rd respondent and insured with the 2nd respondent, and the offending vehicle was under the control of the 3rd respondent at the time of accident. As per clause 5(iv) of the terms and conditions of hire agreement, the owner of the vehicle is liable to pay all claims and he is also liable to pay compensation that may be awarded by the Motor Accidents Claims Tribunal.

12. The Tribunal, having considered the definition of ‘owner’ as defined in Section 2(19) of the M.V. Act, 1939 and Section 2(30) of the M.V. Act, 1988 and as per the decision of the Hon’ble Supreme Court in *Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and others*¹, held that the respondents – owner, insurer and hirer are jointly and

¹ (1997) 7 SCC 481

severally liable to pay the compensation amount to the claimants.

13. There is no *res integra* with regard to the above issue as the same was decided by the Hon'ble Supreme Court in the case of *Managing Director, Karnataka State Road Transport Corporation Vs. New India Assurance Company Limited and others*², wherein also the owner of the offending vehicle hired with KSRTC and insured with the insurance company. Under the lease agreement, it was the liability of the owner to provide comprehensive insurance cover for all kinds of accidental risks. The owner was under liability to provide bus regularly along with driver having valid licence and make payment of salary to the driver regularly. Further, the bus was to be plied on routes as specified by KSRTC and hiring charges were to be paid to the registered owner. As per the agreement, the owner of the bus was to be solely liable for any claim arising out of any accident met by bus, however, if KSRTC had to pay compensation arising out of any such accident, KSRTC could recover that amount from owner out of the amount payable by it to the owner or from the amount payable by insurer to the owner.

14. The Hon'ble Supreme Court in the aforesaid decision (2 supra), having considered the various provisions of Motor Vehicles act, 1988 viz., Sections 157, 2(30), 147, 149 and

² (2016) 2 SCC 382

168, held that by virtue of Section 157, opined that the insurance policy must be deemed to have been transferred in favour of KSRTC and the insurer would be liable to indemnify KSRTC for the liability so incurred by KSRTC and finally held that the insurer cannot escape from the liability to pay compensation. Further, as the KSRTC become the owner of the vehicle during the lease period and the vehicle having been insured at the instance of the original owner, it would be deemed that the vehicle was transferred along with insurance policy to the Corporation. Thus, the insurance company is liable to pay the compensation amount to the KSRTC in the event of the same is paid by it.

15. In view of the aforesaid decision (2 supra) and in the facts and circumstances of the case, the award of the Tribunal could not be found fault with and thereby both the appeals are liable to be dismissed.

16. Accordingly, both the appeals are dismissed. No order as to costs.

17. Miscellaneous Petitions, if any, pending in these appeals shall also stand dismissed.

JUSTICE M.GANGA RAO

31-08-2018
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