

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A.No.43 of 2012

JUDGMENT:

This appeal is arising out of the order dated 21.06.2011 passed in M.V.O.P.No.200 of 2009 by the IX Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short, 'the Tribunal'), awarding compensation of Rs.1,50,000/- with interest at 7.5% per annum from the date of the petition till realization. The appellants herein are respondents 3 and 4, 1st respondent herein is the petitioner, and respondents 2 and 3 herein are respondents 1 and 2 in the said MVOP before the Tribunal. For the sake of convenience, the parties are referred to as they arrayed before the Tribunal.

2. Brief facts of the case are that on 16.09.2008, at about 6.00 pm, while the petitioner-Swathi, who was a minor girl aged 13 years, was boarding the bus bearing No.AP 24 X 2435 at Ibrahimpatnam new bus stand, the driver of the bus drove the bus at high speed in a rash and negligent manner and hit the petitioner. As a result, the petitioner fell down and sustained grievous injuries and fractures and she became disabled due to the injuries. She spent huge amount for treatment. She has, therefore, filed the aforesaid claim petition M.V.O.P.No.200 of 2009 under Section 166 of the Motor Vehicles Act, 1988, against the 1st respondent-owner, 2nd respondent-insurer, 3rd and 4th respondents-hirers of the offending RTC bus, claiming compensation of Rs.2,00,000/- on account of the injuries suffered by the petitioner.

Respondent Nos.1, 3 and 4 remained ex parte. Respondent No.2-insurer filed written statement denying the rash and negligent act on the

part of the driver of the offending bus. It is further contended that the 1st respondent-owner has rented the bus to the 4th respondent-APSRTC Devarakonda Depot, and the bus is in physical custody and control of the 4th respondent and, therefore, the 4th respondent has to be treated as the actual owner of the bus in view of Section 232(30) of the Motor Vehicles Act and, hence, the 2nd respondent-insurer is not liable to pay compensation and the liability entirely rests on the 4th respondent-APSRTC, Devarakonda Depot.

Basing on the pleadings of the parties, the Tribunal has framed three issues. First issue is with regard to the rash and negligence; second, with regard to the entitlement of petitioner to compensation; and the third, with regard to the relief.

On behalf of the petitioner-claimant, the witnesses PWs.1 to 3 were examined and the documents Exs.A1 to A11 were marked. On behalf of 2nd respondent-insurer, RW.1 was examined and Exs.B1 and B2 were marked.

The Tribunal, on consideration of the oral and documentary evidence available on record, has held that the accident occurred due to the rash and negligent driving by the driver of the offending bus, and, therefore, awarded compensation of Rs.1,50,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of deposit, against respondent No.3-APSRTC rep. by its Managing Director, Hyderabad, and respondent No.4-Depot Manager, APSRTC, Devarakonda, Nalgonda District. The claim petition against respondent Nos.1 and 2 was dismissed.

Aggrieved by the order passed by the Tribunal, and contending that respondents 1 and 2 are also jointly and severally liable to pay the

compensation, the respondent Nos.3 and 4, who are Managing Director, APSRTC and the Depot Manager of APSRTC, Devarakonda, have filed this appeal.

3. Heard Sri N.Vasudeva Reddy, learned Standing Counsel for the appellants-APSRTC, Sri A.Madhava Reddy, learned counsel for the 1st respondent-claimant, and Sri Harinadha Gupta, learned counsel for the 3rd respondent-Insurance Company.

4. It is submitted by the learned Standing Counsel for APSRTC that by virtue of the lease agreement entered into between the parties, namely, APSRTC and the owner of the offending bus, and since the bus was insured with the National Insurance Company, all the parties are jointly and severally liable to pay the compensation. It is further submitted that the Tribunal wrongly exonerated the liability of the owner and insurer, and fixed the liability only on APSRTC who are the hirers of the crime vehicle. The learned counsel placed reliance on the judgment in *Managing Director, KSRTC v. New India Assurance Company Limited and another*¹ and the *Managing Director, KSRTC v. Thippamma and others*² on the file of the Hon'ble Supreme Court of India and submitted that by virtue of the terms of the lease agreement entered into by the registered owner of the bus with APSRTC, the APSRTC may be permitted to recover the compensation paid to the claimant from the owner as stipulated in the agreement. It is also submitted that the liability may be fixed against all the respondents jointly and severally.

¹ Civil Appeal No.5293 of 2010

² Civil Appeal No.6641 of 2010

5. Learned counsel for the Insurance Company also fairly submitted that in the light of the judgment relied on by the appellants, all the parties are jointly and severally liable to pay the compensation to the claimant and, therefore, the liability may be fixed against respondents 1 and 2 also.

6. Learned counsel for the petitioners submitted that the claimant has no objection for fixing the liability against all the parties.

7. Having regard to the facts and circumstances of the case, the point that arises for consideration is, whether the respondents 1 and 2, who are the owner and insurer of the offending bus, jointly and severally liable along with respondents 3 and 4, to pay the compensation?

8. Learned counsel for the petitioners and respondents have clearly submitted that the liability has to be fixed against all the respondents in the light of the decision rendered in *Managing Director, KSRTC v. New India Assurance Company Limited and another* (Civil Appeal No.5293 of 2010) and the *Managing Director, KSRTC v. Thippamma and others* (Civil Appeal No.6641 of 2010). Para 35 of the judgment in *Managing Director, KSRTC v. Thippamma and others*, reads as under:

"In view of the aforesaid discussion, we hold that the registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and 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 the light of the above judgment, respondents 1 and 2, being the owner and insurer of the crime vehicle are also jointly and severally liable to pay the compensation along with petitioners 3 and 4, the Managing Director of APSRTC, Hyderabad and the Depot Manager, Devarakonda.

9. Learned counsel for the petitioners submits that there is an agreement between the APSRTC and the registered owner. The said agreement is not before the Court. Learned counsel placed reliance on the contents of paras 2, 7 and 9 of the impugned judgment, which read as under:

“2. Respondent Nos.1, 3 and 4 were set ex parte. Respondent No.2 filed written statement stating that the accident was not due to the rash and negligent driving of the crime bus, and that, it was insured with the respondent No.2. It contended that the crime bus was hired by APSRTC at the time of the accident and was in the actual possession and control of respondent No.4 and was not in physical control of the respondent No.1 and hence, respondent No.4 must be treated as actual owner of the crime bus as per the definition of owner under Section 232(30) of the MV Act. Respondent No.2, therefore, contended that though it has insured the crime bus, it is not liable to pay compensation. It also contended that at the time of the accident crime bus was not plying in a public place and hence, it is not liable to pay compensation. It further contended that the compensation claimed is excessive and not based on any documentary evidence. According to R2, the petitioner is not entitled for court fee exemption and therefore prayed to dismiss the petition with costs.

7. In his cross-examination P.W.1 admitted that the crime bus was hire bus. He stated that he was not aware whether the crime bus belongs to respondents 3 and 4 and they did not pay any extra premium to cover the accident. He denied that respondent No.2 is not liable to pay the compensation.

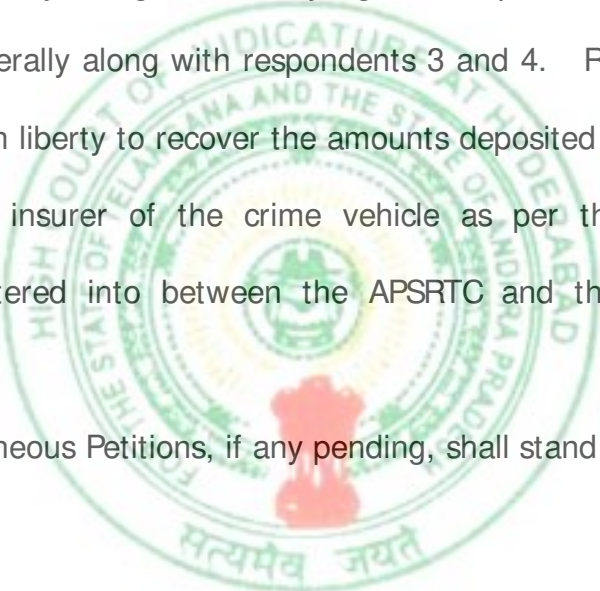
9. In his chief-affidavit, R.W.1 has reiterated the averments made in the written statement of respondent No.2 and marked Exs.B1 and B2. When cross-examined on behalf of respondent No.2, he admitted that the petitioner is a third party, and that, by the date of the accident the insurance policy was in force, and that, in their written statement, they did not specifically pleaded that respondent No.2 was not liable because the crime bus was hired with APSRTC, and that, they did not give any notice to the owner of the bus, and that, the petitioner met with the accident in a public place i.e., bus stand. He denied that the owner of the bus did not violate any of the terms of the police i.e., Ex.B1, and that, the petitioner being a third party, the respondent No.2 is liable to pay the compensation.”

10. In the light of the observations made by the trial Court, respondents 1 and 2 are jointly and severally liable to pay the compensation along with respondents 3 and 4.

11. In view of the submissions made by the learned counsel for the petitioners and respondent-Insurance company, this Court is of the considered view that the respondents 1 and 2 are jointly and severally liable to pay the compensation along with respondents 3 and 4.

12. In the result, the appeal is allowed, by modifying the award passed by the Tribunal by fixing the liability against respondents 1 and 2 also, jointly and severally along with respondents 3 and 4. Respondent Nos.3 and 4 are given liberty to recover the amounts deposited in this case from the owner or insurer of the crime vehicle as per the terms of the agreement entered into between the APSRTC and the owner of the vehicle.

Miscellaneous Petitions, if any pending, shall stand closed.


GUDI SEVA SHYAM PRASAD, J

Date: 10.04.2018
Ssp/ksm