

JUSTICE T. RAJANI

MACMA.No.387 of 2012

JUDGMENT:

This appeal is preferred by the appellant-APSRTC, who is the third respondent claimant before the Court below, assailing the judgment of the Principal District Judge, Kurnool in MVOP.No.549 of 2008 dated 22.10.2009 on the grounds that the Court below erred in awarding compensation against the appellant and failed to see that as per the hire agreement, Ex.B2, the liability is to be borne by the owner and the insurer alone.

2. Heard counsel for the appellant and counsel for respondents 1 and 2. None appears for the third respondent in spite of notice.

3. The main contention of the counsel for the appellant is that the Court below fixed the liability only on the appellant, while dismissing the claim against respondents 1 and 2. The bus involved in the accident is a hired bus. The agreement entered into between the appellant and the owner of the vehicle is marked as Ex.B2. Counsel for the appellant draws the attention of the Court to clause ix of the agreement, wherein it was stipulated that in case of award of claim on the account of the accident caused by hire bus, the respondent/owner shall make good the liability.

4. The decision of the Supreme Court in MANAGING DIRECTOR, KSRTC v. NEW INDIA ASSURANCE COMPANY LIMITED¹ is also on the same lines, wherein the Supreme Court held as under:

¹ (2016) 2 SCC 382

“34. In view of the decision in [HDFC Bank Limited v. Reshma](#) [(2015) 3 SCC 679) the insurer cannot escape the liability, when ownership changes due to the hypothecation agreement. In the case of hire also, it cannot escape the liability, even if the ownership changes. Even though, KSRTC is treated as owner under [Section 2\(30\)](#) of the Act of 1988, the registered owner continues to remain liable as per terms and conditions of lease agreement lawfully entered into with KSRTC.

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.

5. In view of the above, the insurer cannot escape the liability, when ownership changes due to hypothecation agreement, in case of hire also. Hence, the facts of this case are also similar to the facts dealt with by the Supreme Court. Hence, the appellant and respondents 2 and 3 (owner and insurer) are jointly and severally liable. However, it is made clear that APSRTC is entitled to recover the amount paid to the claimants from the owner or from the insurer, as stipulated in the agreement. The appellant does not, however, raise any other objection with regard to the judgment of the Court below.

The civil miscellaneous appeal, to the extent indicated above, is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

July 20, 2018
DSK