

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.245 OF 2011

JUDGMENT:

Appellant-Andhra Pradesh State Road Transport Corporation filed this appeal against the award and decree dated 25.06.2007 passed in M.V.O.P.No.7 of 2004 by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District and Sessions Judge, Tirupati, granting compensation of Rs.3,60,000/- payable by the appellant, as against the claim of Rs.6,00,000/-, for the death of the deceased-P.Ramachandra Reddy.

Respondents 1 to 3, who are the claimants-father, mother and sister of the deceased respectively, filed claim petition under Section 166(1)(c) of Motor Vehicle Act alleging that on 28.01.2002 at about 7.15 a.m. when the deceased was driving the jeep bearing No.AP03 V-4274 from Pachikapalam to Kothapalli Mitta and while the jeep was proceeding towards Vedurukuppam side, the driver of hired bus of APSRTC bearing No.AP03 U 4141 drove the bus in a rash and negligent manner and dashed against the jeep, due to which, Ramachandra Reddy died on the spot. It is claimed that the deceased was aged 28 years, used to earn Rs.6,000/- per month and contribute the same to his family. Thus, the claimants claimed compensation of Rs.6,00,000/- on account of death of the deceased, payable by all the respondents jointly and severally.

The appellant-APSRTC filed counter stating that the bus involved in the accident was belonging to the 4th respondent herein and it was hired to APSRTC under hire agreement. The owner of the bus is responsible and liable for payment of compensation.

The owner of the bus, 4th respondent herein, filed a counter stating that the accident occurred due to fault of the driver of the jeep. As on the date of accident, the bus was under hire to APSRTC. Hence, the 4th respondent denied his liability to pay compensation. He further submitted that as the bus was insured with New India Assurance Company Limited, Chittoor Branch, 6th respondent herein, the Insurance Company is liable to pay compensation to the claimants.

The owner of the jeep, 5th respondent herein, filed counter stating that there was no negligence on the part of the driver of the jeep.

The Insurance Company, 6th respondent herein, filed counter alleging that the compensation claimed by the claimants is excessive, crime was registered against the driver of the RTC Bus and not against the driver of the jeep. Hence, there was no negligence on the part of the driver of the jeep. Therefore, APSRTC and the owner of the bus, who gave the bus on hire to APSRTC, alone are liable to pay compensation to the claimants. The Insurance Company is not liable to pay any compensation.

Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the deceased P.Ramachandra Reddy, son of petitioners 1 and 2 and brother of petitioner No.3 died in the motor vehicle accident that took place due to rash and negligent driving of the driver of the APSRTC hired bus bearing No.AP 03 U 4141 on 28.01.2002?
- 2) Whether the petitioners are entitled for compensation? If so, to what amount?
- 3) To what relief?

On behalf of the claimants, PWs 1 to 3 were examined and Exs.A.1 to A.6 were got marked. On behalf of the respondents, no witness was examined, however, Ex.B.1-attested copy of agreement was got marked.

The Tribunal, based on the evidence available before it more particularly Ex.A.2-Certified Copy of charge sheet, held that the driver of the offending bus drove the bus in a rash and negligent manner and dashed against the jeep, due to which, the deceased died in the jeep. Based on Ex.B.1, the Tribunal further held that APSRTC is the owner of the bus for all purposes and is liable to pay compensation since as on the date of accident APSRTC was having control over the offending bus. Hence, the Tribunal held that APSRTC alone was liable to pay compensation to the claimants. Aggrieved by the said finding, the present appeal came to be filed by APSRTC. There is no dispute or grievance raised by the appellant-APSRTC with regard to quantum of compensation.

Learned counsel for the appellant-APSRTC would contend that the finding of the Tribunal that the appellant is responsible for payment of compensation to the claimants is contrary to the terms of Hire Agreement-Ex.B.1. In support of his contention, learned counsel relied on the decision of the Hon'ble Supreme Court in ***Managing Director, Karnataka State Road Transport Corporation vs. New India Assurance Company Limited and others***¹ wherein it is held that the registered owner, insurer as well as KSRTC would be liable to pay compensation jointly and severally to the claimants and KSRTC in terms of the lease agreement entered into with the registered owner would be entitled

¹ (2016) 2 SCC 382

to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer. Coming to the present case, there is no such agreement binding the insurer to pay compensation as the insurance policy of the bus is not filed before the Tribunal. However, as per Ex.B.1-agreement, the owner of the bus is liable to pay compensation to the claimants. In the facts and circumstances of the case, the finding of the Tribunal in holding that the appellant-APSRTC is liable to pay compensation, cannot be found fault with as the bus is hired with the appellant and at the time of accident the bus was in its control. Hence, the appellant is owner as defined under Section 2 (30) of the M.V.Act. However, in view of the ratio laid down by the Hon'ble Supreme Court in ***Managing Director, KSRTC (1 supra)***, liberty is given to the appellant-APSRTC to recover the compensation amount paid by it to the claimants, from the owner of the bus, as per law. Accordingly, the appellant is directed to pay the entire compensation to the claimants, duly giving credit to the amounts if any already paid, within one month from the date of receipt of a copy of this judgment.

The appeal is allowed to the extent indicated above.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

28.09.2018
sur