

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.19000 of 2019

ORDER:

This Writ Petition is filed seeking writ of mandamus declaring the Proceedings No.T2/359(Rep.13)/15-RM:KR, dated 03.08.2019 issued by the 2nd respondent for recovery of Rs.2,88,506/- in six instalments from Hire Bills of petitioner's hire bus bearing reg.No.TS 02UA-8093 operated on Sircilla-Karimnagar Route as illegal, arbitrary and consequently to direct the respondents to refund Rs.48,084/-, which is already recovered from the petitioner.

It is the case of the petitioner that petitioner entered into an agreement with the 2nd respondent on 29.08.2015 for plying the bus bearing No.TS-02UA 8093 under the control of the 4th respondent. While so, Crime No.371/2017 was registered by Sircilla Town PS on 29.10.2017 under Section 337 IPC against the driver of the bus alleging that Thogaru Mallaiah (Passenger) while boarding the bus, the driver drove the bus in a rash and negligent manner, due to which he fell down from the bus and received foot injury. The injured filed MVOP No.183/2018 before the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Warangal (MACT) u/s.166 of Motor Vehicles Act claiming compensation of Rs.30,00,000/-. The 3rd respondent, who is no way concerned, had filed a vague counter on behalf of TSRTC and failed to disclose about the ownership of the petitioner over the bus, its Hire Agreement with TSRTC and also its insurance with the National Insurance Company and allowed the Tribunal to pass order & decree dated 20.02.2019 awarding compensation of Rs.2,62,000/- with proportionate costs and future interest @ 7.5% p.a from the date of petition, till realization. In

pursuant to the same, the 3rd respondent deposited Rs.2,88,506/- with the Tribunal and informed the 2nd respondent about the same and in turn the 2nd respondent issued show-cause notice dated 10.07.2019 calling the explanation of the petitioner as to why the amount shall not be recovered in six instalments in terms of clause No.5(v) of the Hire Agreement. Though the petitioner filed explanation on 23.07.2019 without considering the same, passed impugned order dated 03.08.2018 confirming the contents of show-cause notice and recovered 1st instalment of Rs.48,084/-. Aggrieved by the same, present writ petition is filed.

Heard learned counsel for the petitioner and Sri A.Ravi Babu, learned Standing Counsel appearing for respondents 1 to 4.

Learned counsel for the petitioner submits that basing on the Award and decree dated 20.02.2019 in MVOP No.183/2018, to which petitioner is not a party, the respondents Corporation demanding the petitioner to pay the awarded amount in the said MVOP, in view of clause No.5(v) of the Agreement dated 29.08.2015. He also submits that if the 2nd respondent in MVOP No.183/2018 informed about the accident and pendency of MVOP, he would have impleaded himself along with the insurer of the subject bus, but without doing so, recovering the amount alleged in the impugned order dated 03.08.2019, is illegal.

On the other hand, learned Sri A.Ravi Babu, learned Standing Counsel for the respondents 1 to 4 submits that contract between the petitioner and the respondents Corporation for plying the buses of the petitioner, clearly envisages that it is the owner of the vehicle, who is responsible for the claims arising out of motor vehicle accidents. He submits that since there is a clause in Hire Agreement for payment of

compensation, as such, the 2nd respondent- Regional Manager has issued impugned order dated 03.08.2019 for recovering that amount, as such, same cannot be faulted. He also submits that the agreement between the petitioner and the respondents Corporation also contains a clause that the owner of the vehicle himself is liable for the claims under the Motor Vehicles Act.

In this case, it is to be seen that there is clause No.5(v) in the agreement dated 29.08.2015 stating that it is the owner of the vehicle, who is liable to pay the claims arising out of the motor vehicles accident. For the sake of convenience, it is extracted as under:

“5 (v) The owner shall be liable for all claims that may arise due to statutory violations out of the operations, like claim due to accidents payable under the provisions of M.V.Act 1988/Rules and TSRTC shall under no circumstances be made liable or responsible to pay compensation that may be awarded by Motor Accidents Claims Tribunal or Tribunals in respect of accidents. In the event of payment of compensation by TSRTC to the injured persons/dependents of deceased persons or to the owners of the property damaged, by any Award of the Motor Vehicle Accidents Tribunal/Order of the Court in cases involving accident to hire buses, the TSRTC shall have right to recover the said compensation from the hire bus owner. The hire bus owner hereby agrees that he shall not dispute the said recovery.”

A perusal of the aforesaid clause goes to show that even in the event of payment of compensation by TSRTC to the injured person/dependents of deceased persons or the owners of the property damaged, by any Award of Motor Vehicle Accidents, Tribunal/ Order of the Court in cases involving accident to hire buses, the TSRTC shall have the right to recover the said compensation from the hire bus owner and the owner agrees to pay the same and he shall not be dispute the said recovery. If that be so, it cannot be said that the respondent's Corporation is not entitled to recover the amounts from the petitioner, who is owner of the vehicle or from his insurer. Moreover, petitioner

could have challenged the Award of the Tribunal, in accordance with law, if he is aggrieved by the same.

In similar circumstances, this Court disposed of WP No.15133 of 2019 vide order dated 22.07.2019, wherein also, the petitioner-owner of the hire bus was not made as party, as in the present writ petition.

In view of above facts and circumstances, I do not see any reason to entertain the Writ Petition. Since, the 2nd respondent passed impugned final order, it is open for the petitioner to avail alternative remedies against the same.

Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stands closed.

24-09-2019
kvs

A.RAJASHEKER REDDY,J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.19000 of 2019

Date: 24.09.2019



kvs