APHC010453962011

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Bench Sr.No:-51 [3396]

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 3193 of 2011

Apsrtc, Rep.by Md, Musheerabad, Hyderabad. ...Appellant

Vs.

Yerramsetti Ramachandra Rao And 3 Others and Others ...Respondent(s)

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CORAM : DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

DATE : 19th November 2026

Present:

Advocate for Appellant: K SRINIVASA PRASAD SC For APSRTC

Advocate(s) for Respondent(s): SIVA BHAMI REDDY S, SUBRAHMANYAM MANDALIKA, KRISHNANAND VADAKATTU

The Court made the following Judgment:

The present appeal is preferred by the appellant/Andhra Pradesh State Road Transport Corporation (for short, 'APSRTC') under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the M.V. Act'), challenging the award dated 19.01.2010 passed in M.V.O.P. No.438 of 2005 on the file of the VIII Additional District Judge-cum-Motor Vehicles Accidents Claims Tribunal (Fast Track Court), East Godavari District at Rajahmundry (hereinafter referred to as 'the Tribunal'), whereby the Tribunal awarded compensation of Rs.2,30,000/- with interest at the rate of 7.5% per annum from the date of petition till realization, holding respondents 2 and 3 jointly and severally liable to pay the compensation and dismissing the claim against the fourth respondent/Insurance Company.

2. The appellant herein is the APSRTC, which hired the offending bus bearing registration No.AP 5U 2978. The 1st respondent is the claimant before the Tribunal. The 2nd respondent is the driver, the 3rd respondent is the owner and the 4th respondent is the insurer of the offending bus.

3. The case of the claimant, in the petition before the Tribunal, is that:

On 12.10.2003 at about 2.00 p.m., while the claimant, along with Polisetti Venkanna and Aravapalli Ramulu, was travelling in the bus bearing registration No.AP 5U 2978, having boarded the same at Angara village to proceed to Venkatayapalem, when the bus was proceeding between

Endagandi and Teki villages, the rear wheel tyre of the bus burst and the mudguard with tin sheets was blown up, causing multiple grievous injuries to the claimant, who was seated above the rear wheel portion of the bus. The claimant contended that the accident occurred due to the negligence of the driver and the owner of the bus in not properly maintaining the vehicle and keeping the tyres and tubes in good condition. Immediately after the accident, he was shifted to Dr. Aravinda Hospital, Rajahmundry, where he was treated as an inpatient for about two months and subsequently as an outpatient. He underwent two surgeries, during which steel rods were inserted, and incurred medical expenditure. He further contended that he sustained permanent disability and required further surgery for removal of the implants. Accordingly, he filed the claim petition seeking compensation of Rs.3,00,000/- under various heads.

4. The 1st respondent/driver and the third respondent/owner of the offending bus filed their respective counters admitting the occurrence of the accident but denying negligence on their part. They contended that the tyre and tube were burst due to the bad condition of the road, where sharp metal stones were exposed on account of the washing away of the soil during the rainy season, and that the accident was not attributable to any negligence on their part.

5. The appellant/APSRTC filed its counter contending that the offending bus was hired from the 3rd respondent/owner and that there was no

employer-employee relationship between the appellant and the driver of the bus. It was further contended that, as per the terms of the hire agreement, the owner alone was liable to pay compensation in the event of an accident. The fourth respondent/Insurance Company also filed its counter disputing the claim and putting the claimant to strict proof of the accident, negligence, injuries, medical expenditure, disability and other particulars.

6. Basing on the above pleadings, the learned Tribunal framed the necessary issues for consideration. During the course of trial, the claimant examined himself as P.W.1 and examined two co-passengers as P.Ws.2 and 3. The Orthopaedic Surgeon who treated the claimant was examined as P.W.4, and Exs.A-1 to A-20 and Exs.X-1 and X-2 were marked. On behalf of the respondents, no oral evidence was adduced. However, Ex.B-1, copy of the insurance policy, and Ex.B-2, copy of the hire agreement between the second and third respondents therein, were marked.

7. Upon appreciation of the oral and documentary evidence on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the offending bus and also due to the failure of the owner in properly maintaining and inspecting the tyres and tubes of the vehicle. The Tribunal assessed the permanent disability of the claimant at 25%, as against 40% assessed by P.W.4, fixed his monthly income at Rs.2,500/- and applied the multiplier of 14, considering his age as 41 years. Accordingly, the Tribunal awarded total compensation of Rs.2,30,000/- under

various heads, together with interest at the rate of 7.5% per annum from the date of petition till realization. The Tribunal further held that respondents 2 and 3, namely, the owner of the offending bus and APSRTC, were jointly and severally liable to pay the compensation, while dismissing the claim against the fourth respondent/Insurance Company.

8. Aggrieved by the said award, particularly the findings fastening liability upon the appellant/APSRTC and the quantum of compensation awarded, the APSRTC preferred the present appeal.

9. Heard Sri K. Srinivasa Prasad, learned Standing Counsel for the appellant/APSRTC, Sri Siva Bhami Reddy, Sri Subhramanyam Mandika and Krishnanand Vadakattu, learned counsel for the respondents.

10. Learned Standing Counsel for the appellant/APSRTC contends that the Tribunal failed to appreciate that the accident occurred due to the bad condition of the road and the sudden bursting of the tyre, but not due to any rash or negligent driving on the part of the driver. It is further contended that the appellant had taken the offending bus on hire from the third respondent/owner and, as per the terms of the hire agreement, the owner alone is liable to pay compensation in the event of an accident. The learned counsel further contends that the Tribunal erred in exonerating the fourth respondent/Insurance Company despite the insurance policy being in force as on the date of the accident. It is also contended that the compensation awarded by the Tribunal is excessive, that the multiplier of 14 is not proper in

the absence of proof of the claimant's age by a birth certificate and that the interest awarded at 7.5% per annum is excessive. Hence, the learned counsel prays to allow the appeal by setting aside the award passed by the Tribunal.

11. Per contra, learned counsel for the respondents supports the award passed by the Tribunal and contends that the Tribunal, upon proper appreciation of the oral and documentary evidence, rightly held the driver and owner responsible for the accident and awarded just and reasonable compensation. Hence, the learned counsel prays to dismiss the appeal.

12. The points that arise for determination are:

(i) Whether the appellant/APSRTC is liable to pay compensation to the claimant in respect of the accident involving the hired bus, in view of the terms of the hire agreement?

(ii) Whether the compensation awarded by the Tribunal is excessive and requires interference by this Court?

13. <u>POINT NO.1:</u>

It is not in dispute that the claimant sustained multiple injuries in the accident that occurred on 12.10.2003 while travelling in the offending bus bearing registration No.AP 5U 2978. The Tribunal, upon appreciation of the evidence of P.Ws.1 to 3 and the documentary evidence, particularly Ex.A-1 FIR and Ex.A-9 final report, held that the accident occurred due to the rash and negligent driving of the 1st respondent/driver and also due to the failure of the 3rd respondent/owner in properly maintaining the vehicle. The appellant

has questioned the said finding; however, no oral evidence was adduced on behalf of the appellant to substantiate its contention that the tyre burst occurred exclusively due to the bad condition of the road.

14. It is evident from the record that the offending bus was taken on hire by the appellant/APSRTC from the third respondent/owner. Ex.B-2 is the copy of the hire agreement entered into between the appellant and the third respondent. The question that arises for consideration is whether the appellant, being the hirer of the offending bus, is liable to pay compensation when the terms of the hire agreement place the responsibility for such claims upon the owner of the vehicle.

15. In **Rajasthan State Road Transport Corporation v. Kailash Nath Kothari,**[1] the Hon'ble Supreme Court, under the Motor Vehicles Act, 1939, held that the expression "owner" would include the person who has the actual possession and control of the vehicle. However, in Uttar Pradesh State Road Transport Corporation v. Kulsum,[2] the Hon'ble Supreme Court held that the definition of "owner" underwent a drastic change under the Motor Vehicles Act, 1988, and that the decision in Kailash Nath Kothari has no application to cases governed by the 1988 Act. The same reasoning applies to the decision in **Branch Manager, Oriental Insurance Co. Ltd. v. Javvadi Bhaskara Rao.**[3]

[1](1997) 7 SCC 481
[2](2011) 8 SCC 142
[3]2009 (2) ALT 512

16. In **Uttar Pradesh State Road Transport Corporation v. Kulsum & Others** [4], the Hon'ble Supreme Court held that when a bus is taken on hire by the Corporation and its effective control and command is with the Corporation, the vehicle is deemed to have been transferred to the Corporation along with the insurance policy in existence, in view of Section 157 of the Act. The Court further held that compulsory insurance is meant for the benefit of third parties, and that the Insurance Company cannot escape its liability to pay compensation to the victims. Accordingly, the Insurance Company was held liable to pay the compensation, with liberty to recover the same from the owner of the vehicle.In the present case, Ex.B-1 establishes that the offending bus was insured with the 4th respondent, and the policy was in force on the date of the accident. No breach of the policy conditions has been pleaded or proved. Ex.B-2, the hire agreement, governs the rights of the owner and the Corporation between themselves, and it cannot affect the right of the claimant to recover compensation.

17. Therefore, following the principle laid down in **Kulsum** (supra), the 4th respondent-Insurance Company is liable to pay the compensation awarded to the claimant. The learned Tribunal erred in fastening liability on the appellant-APSRTC and exonerating the Insurance Company. Accordingly, the appellant-APSRTC is exonerated, and respondents 3 and 4, namely, the

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[4] **(2011) 8 SCC 142**

owner and insurer of the offending bus, are held jointly and severally liable to pay the compensation. This point is answered accordingly.

POINT NO.2:

18. The appellant/APSRTC contends that the compensation awarded by the Tribunal is excessive and that the Tribunal erred in applying the multiplier of 14. It is to be noted that the Tribunal assessed the compensation under different heads after considering the oral and documentary evidence adduced by the claimant.

19. The claimant sustained multiple fractures to both his legs. P.W.4, the Orthopaedic Surgeon who treated him, categorically deposed that the claimant sustained fractures to both bones of the right leg, a comminuted fracture of the right leg, a fracture of the lateral condyle of the left knee and fractures to both bones of the left leg. He further deposed that the claimant underwent multiple surgeries and that the injuries resulted in permanent physical disability of 40%. However, the Tribunal, taking into consideration the nature of the claimant's avocation as an agriculturist and the effect of the disability on his earning capacity, restricted the disability to 25%.

20. In **Raj Kumar v. Ajay Kumar and Another** [5] the Hon'ble Supreme Court held that while determining compensation for permanent disability, the Court has to consider the effect of such disability on the actual earning capacity of the injured, having regard to his avocation and the nature

[5] **(2011) 1 SCC 343**

of the injuries sustained. In the present case, the Tribunal considered the medical evidence of P.W.4 and assessed the functional disability at 25%. The appellant has not placed any contra evidence to discredit the medical evidence or to establish that the assessment made by the Tribunal is excessive. Therefore, this Court finds no reason to interfere with the assessment of disability made by the Tribunal.

21. With regard to the monthly income, the claimant claimed that he was earning Rs.6,000/- per month through cultivation of his own lands and leased lands. However, the Tribunal, upon considering Exs.A-12 to A-18 and the admissions made by the claimant in his cross-examination, found that the claimant failed to establish his ownership or cultivation of the lands on lease. Consequently, the Tribunal fixed his monthly income at Rs.2,500/-, taking into consideration the income of an agricultural coolie as on the date of the accident. The said assessment appears reasonable, and the appellant has not produced any evidence to establish that the income fixed by the Tribunal is excessive.

22. Further, the Tribunal considered the age of the claimant as 41 years and applied the multiplier of 14. In **Sarla Verma and Others v. Delhi Transport Corporation and Another** [6] **,** the Hon'ble Supreme Court prescribed the multiplier of 14 for the age group of 41 to 45 years. Therefore, when the Tribunal considered the age of the claimant as 41 years, the application of multiplier 14 cannot be said to be erroneous. The mere

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[6] **(2009) 6 SCC 121**

contention that the claimant did not produce a birth certificate, in the absence of any contra evidence establishing a different age, is not sufficient to interfere with the multiplier applied by the Tribunal.

23. Accordingly, the Tribunal calculated the loss of future earnings due to permanent disability at Rs.1,05,000/- (Rs.2,500/- x 25% x 12 x 14). Having regard to the nature of the injuries, the evidence of P.W.4 and the claimant's avocation, this Court finds no reason to interfere with the said assessment.

24. The Tribunal awarded Rs.40,000/- towards pain and suffering, Rs.60,000/- towards medical expenses and transportation, Rs.15,000/- towards loss of earnings during the period of treatment and Rs.10,000/- towards future medical expenses for removal of implants. Considering that the claimant sustained multiple fractures to both legs, underwent several surgeries and was admitted to the hospital on four separate occasions apart from his initial inpatient treatment, the amounts awarded under the above heads cannot be considered excessive. The appellant has not placed any material before this Court to establish that the amounts awarded under the said heads are exorbitant or unsupported by the evidence.

25. Therefore, this Court is of the considered opinion that the Tribunal, upon appreciation of the oral and documentary evidence, rightly assessed the compensation at Rs.2,30,000/- under various heads. The appellant has failed to establish any ground warranting interference with the

quantum of compensation awarded by the Tribunal. Accordingly, the compensation of Rs.2,30,000/- awarded by the Tribunal is confirmed. This point is answered accordingly.

26. Therefore, in view of the foregoing discussion, this Court is of the considered opinion that the award passed by the Tribunal does not warrant interference insofar as the quantum of compensation is concerned. However, the finding of the Tribunal fastening liability upon the appellant/APSRTC and exonerating the fourth respondent/Insurance Company warrants interference. Accordingly, the compensation of Rs.2,30,000/- awarded by the Tribunal is confirmed, while modifying the liability to pay the compensation. Thus, this point is answered accordingly.

27. In the result, the M.A.C.M.A. is allowed, by exonerating the appellant/APSRTC from the liability to pay compensation and holding respondents 3 and 4/owner and insurer of the offending bus jointly and severally liable to pay the compensation of Rs.2,30,000/-, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization, with proportionate costs. The 4threspondent/Insurance Company shall deposit the compensation amount, together with accrued interest and costs, before the Tribunal within a period of two (2) months from the date of receipt of a copy of this judgment. Upon such deposit, the claimant is entitled to withdraw the compensation amount with accrued interest, subject to the directions issued by the Tribunal in the impugned award. The Tribunal

shall proceed to pay the amount in the aforesaid terms, adjusting the amount, if any, already paid.

Miscellaneous petitions pending, if any, shall stand closed.

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DR. VENKATA JYOTHIRMAI PRATAPA,J

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THE HONOURABLE DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

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