
(1996) 12 AP CK 0029

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 1439 of 1990

Andhra Pradesh State Road Transport Corporation and
Another

APPELLANT

Vs

Kathula Lingaiah and Others

RESPONDENT

Date of Decision : 11-12-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1998) 2 ACC 266 : (1997) 4 ALD 537 : (1997) 2 ALT 605

Hon'ble Judges : A. Hanumanthu, J

Bench : Single Bench

Advocate : K. Harinath, SC, for the Appellant; Not appearing in person or by Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

A. Hanumanthu, J.—The Andhra Pradesh State Road Transport Corporation, represented by its General Manager, Musheerabad, Hyderabad, filed this appeal assailing the award dated 28-4-1989 passed by the Chairman, Motor Accidents Claims Tribunal (Addl. District Judge) at Nalgonda, under which a sum of Rs. 17,500/- has been awarded as compensation in O.P.No. 151 of 1988 to respondent Nos. 1 & 2 who are the parents of the deceased girl, Yadamma aged about 8 years who died in the motor accident which took place on 20-5-1988. The appellant, the 3rd respondent herein and the Insurance Company were ordered to pay the said amount jointly and severally to respondent Nos. 1 & 2 herein.

2. The first respondent herein is reported to have been dead and no steps have been taken to bring the legal heirs of the first respondent on record, hence, the appeal against the first respondent abates. Though respondent Nos. 2 & 3 herein are served with notices, they have not chosen to appear before this Court and they are not represented by any Advocates.

3. The facts are not in dispute. On 5-5-1988 at about 2-50 p.m., while the deceased, Yamma along with two other girls were going on the left side of the road on the outskirts of Kesharajupalli village on the road leading from Nalgonda to Tipparthy, the bus bearing No. AEK 9396 belonging to the 3rd respondent herein and hired by the appellant dashed against the said Yamma and due to the impact, she sustained injuries and later she succumbed to the injuries at 6-45 p.m., on the same day in the hospital. Respondent Nos. 1 & 2 herein are the parents of the deceased. They filed the claim petition, O.P.No. 151 of 1988 claiming a sum of Rs. 50,000/- as compensation alleging that the accident was due to the rash and negligent driving of the bus by its Driver. During the enquiry, P.Ws. 1 & 2 and Exs. A-1 to A-3 were marked on behalf of the claimants and no oral or documentary evidence was adduced on behalf of the respondents. On a consideration of the evidence on record, the Tribunal held that the accident was due to the rash and negligent driving of the bus bearing No. AEK 9396 by its Driver and that Yamma died due to the said accident. The Tribunal awarded a compensation of Rs. 17,500/- on various counts and it also ordered that respondent Nos. 1 to 3 shall jointly and severally pay to the claimants the said sum. The Corporation who is the 3rd respondent in the O.P., has come up with this appeal.

4. The only point urged by the learned Standing Counsel for the Corporation is that the Corporation is merely a hirer of the bus, AEK 9396 involved in the accident, that it is neither the employer of the Driver who caused the said accident nor the owner of the said bus and it is only a hirer for a limited purpose, and as such, the Corporation is not liable to pay the compensation for the accident caused by the Driver of that Bus. There is much force in this contention. It is not in dispute that the appellant Corporation had engaged the bus AEK 9396 and it is only a hirer. The 3rd respondent herein is its owner. He did not cease to be the owner of the vehicle just because it has been hired by Corporation, Further the Driver of the said vehicle also does not become an employee of the Corporation. The accident had taken place due to the rash and negligent driving of the vehicle by its Driver who was in the employment of the 3rd respondent only. Moreover, the said vehicle was also insured with Oriental Insurance Company, Vijayawada, Krishna District. The said Insurance Company is not made as a party to this appeal. The owner of the vehicle who is added as respondent No. 3 in this appeal did not choose to contest. The appellant-Corporation being the hirer of the vehicle involved in the accident is not liable to pay any compensation to the claimants in the absence of any specific clause in the hire agreement. The owner of the vehicle as well as the insurance company alone are liable to pay the compensation. This view of mine gets support from a decision of this Court reported in A.P.S.R.T.C v. K. Veeraswamy and Ors. 1989 (3) ALT 42 . The learned trial Judge committed error of law by observing that the A.P.S.R.T.C, is also vicariously liable for the rash and negligent driving of the bus bearing No. AEK 9396 by its Driver. There is nothing on record to show that the Driver of the said bus was under the direction and discipline of the authorities of the

Corporation. The said finding is liable to be set aside as it is erroneous in law. The appellant- Corporation is not vicariously liable as the driver of the bus is not its employee and it is also not the owner of that bus involved in the accident. On a overall consideration of the facts and circumstances of this case, I am of the opinion that the owner of the bus bearing No. AEK 9396 and the Insurance Company of the said bus which was involved in the accident alone are jointly and severally liable to pay the compensation awarded to the claimants and the A.P.S.R.T.C. the appellant herein, who is the 3rd respondent in O.P.No. 151 of 1988 is not liable to pay the compensation.

5. In the result, the appeal is allowed and the impugned award is modified to the effect that the owner and the Insurance Company of the bus bearing No. AEK 9396 involved in the accident alone are jointly and severally liable to pay the compensation and the A.P.S.R.T.C. Corporation is not liable to pay the compensation awarded to the claimants. No costs.