
(2022) 09 TEL CK 0004

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 1435 Of 2014

A.P State Road Transport Corporation

APPELLANT

Vs

Tatikonda Ramadevi 4 Others

RESPONDENT

Date of Decision : 02-09-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(5), 166
Motor Vehicles Act, 1988 — Section 96(2)
Indian Penal Code, 1860 — Section 304A

Citation : (2022) 09 TEL CK 0004

Hon'ble Judges : G. Sri Devi, J

Bench : Single Bench

Advocate : B Mayur Reddy, S Satyanarayana Moorthy

Final Decision : Allowed

Judgement

1. This appeal is filed by the Andhra Pradesh State Road Transport Corporation (presently, Telangana State Road Transport Corporation), aggrieved of the order and decree dated 17.08.2012 passed in M.V.O.P.No.1263 of 2010 on the file of the Motor Accidents Claims Tribunal (Prl. District Judge), at Khammam.

2. Brief facts of the case are that respondent Nos.1 to 3 herein, who are the claimants in M.V.O.P.No.1263 of 2010, filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.7,50,000/- for the death of one Tatikonda Brahma Chary (hereinafter referred to as "the deceased"), who died in a motor vehicle accident. It is stated that on 18.08.2009 the deceased boarded the bus bearing No.AP 16 TB 2196 hired with R.T.C. in order to go to Dameracharla and when the bus reached Dameracharla bus stop, and while the deceased was getting down from the bus, the driver of the bus moved the bus in a rash and negligent manner, due to which the deceased fell down and sustained head injury and while shifting him to the hospital he died. On a complaint, the Police, Chandrugonda, registered a case in Crime No.152 of 2009 against the driver of the bus for the offence punishable under Section 304-A of I.P.C. It is

also stated that the deceased was hale and healthy and was earning Rs.200/- per day as he was a Carpenter. As the accident occurred due to rash and negligent driving of the driver of the bus, the claimants filed the claim-petition against the respondents 1 to 3, being the owner, insurer and hirer of the said bus.

3. Before the Tribunal, the owner of the vehicle remained ex parte. The 5th respondent herein-Insurance company filed counter stating that the accident occurred only due to the negligence of the deceased and that there was no negligence on the part of the driver. It is specifically contended that the bus was hired with the appellant-3rd respondent and as such the appellant-3rd respondent alone is liable to pay the compensation. It is further contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

4. The appellant-3rd respondent filed counter stating that the accident occurred only due to the negligence of the deceased as he got down from moving bus and fell down and that there was no negligence on the part of the driver of the bus. It is specifically contended that the bus was insured with the 5th respondent herein and as such, the 5th respondent-insurance company alone is liable to pay the compensation.

5. Basing on the above pleadings, the Tribunal framed the following issues:-

1. Whether the accident took place due to the rash and negligent driving of the crime vehicle hired R.T.C. bus bearing No.AP 16 TB 2196 by its driver?

2. Whether the petitioners are entitled to claim compensation for the death of the deceased? If so, to what amount and from which of the respondents?

3. To what relief?

6. After considering the oral and documentary evidence available on record, the Tribunal allowed the O.P. in part awarding a total compensation of Rs.6,65,000/- along with interest @ 7.5% per annum from the date of petition till the date of realization, to be paid by the appellant-RTC being hirer and by the respondent Nos. 4 and 5 herein being owner and insurer, jointly and severally within two months from the date of said order.

7. Heard the learned Standing Counsel for the appellant-RTC, learned counsel for the claimants-respondent Nos.1 to 3 and the learned counsel for the respondent No.5, Insurance Company. Perused the material available on record.

8. The only contention of the learned Standing Counsel for the appellant-RTC is that the tribunal gravely erred in fixing liability on the RTC, who is a mere hirer of the bus, and in fact, the liability ought to have been fixed on the insurer and owner of the bus and RTC ought to have been exonerated from liability considering the fact that Ex.B.1 policy was in force.

9. The learned counsel appearing for the claimants sought to sustain the impugned order. However, the learned Standing Counsel appearing on behalf of the Insurance Company, has contended that inasmuch as the RTC was hirer of

the bus, the tribunal has rightly apportioned the compensation amount to be payable by the RTC and the Insurance company equally and the same needs no interference by this Court.

10. As seen from the record, the appellant-RTC is the hirer of the crime bus that belonged to respondent No.4 herein and insured with respondent No.5 herein. Admittedly, Ex.B.1 policy was in force as on the date of accident. The owner of the bus paid the premium towards liability of passengers and third party risk. The insurance company collected the said premium and issued Ex.B1 policy. Once the insurance company collected the premium covering the risk to the passengers and third parties, it is no longer open to the insurance company to escape their liability. Since the offending bus was covered by Ex.B1 policy even though subsequently hired to RTC, the insurance company would not cease its liability so far as third parties/victims are concerned even if the owner or the purchaser did not give intimation as required under the provisions of the Act. On principle, it is not open to the insurance company to absolve its liability towards passengers/third party risk on the short ground that the insured vehicle has been given on hire.

11. In *A.P.S.R.T.C., Hyderabad v. B.Kanaratnabai* (2013) 1 ALD 644 (FB) a Full Bench of composite State of Andhra Pradesh held as under:-

"83. On principle, it is not open to the insurance companies to absolve themselves of liability towards passenger/third party risks on the short ground that the insured vehicle has been given on hire without following the prescribed procedure. This Court in *Madineni Kondaiah's* case (supra) has already held that even transfer of the ownership of an insured vehicle without following the due procedure would not absolve the insurance company of liability towards third party risks. Mere transfer of possession, through hire of the vehicle, cannot stand on a worse footing or exempt the Insurance Companies from liability in this regard.

84.

85. On the above analysis, we hold that mere hiring of insured buses by the owners to the APSRTC would not in any manner limit the liability and accountability of the Insurance Companies, be it under the Act of 1988 or the Act of 1939, to honour passengers/third party risks covered by the Insurance Policies issued by them in favour of the owners. Notwithstanding the hiring of insured buses by the owners to the APSRTC, the Insurance Companies shall be solely and exclusively liable for payment of the compensation arising out of such passengers/third party claims unless any of the grounds in Section 149 (2) of the Act of 1988/Section 96 (2) of the Act of 1939 are made out."

12. In *U.P.State Road Transport Corporation v. National Insurance Company Limited and others* 2021 ACJ 2282 while referring to the judgment in *U.P.State Road Transport Corporation v. Kulsum* 2011 ACJ 2145 (SC) the Apex Court held as under:

"The Court has come to the conclusion that when the effective control and command of the bus is with the Corporation, the Corporation becomes the owner of the vehicle for the specified period. It was further held that when the actual possession of the vehicle is with the Corporation, the vehicle, the driver and the conductor were under the direct control and supervision of the Corporation. Therefore, "through the definition of 'vicarious liability' it can be inferred that the person supervising the driver is liable to pay the compensation to the victim. During such time, however, it will be deemed that the vehicle was transferred along with the insurance policy, even if it were insured at the instance of the original owner. Thus, the insurance company would not be able to escape its liability to pay the amount of compensation".

13. In view of the law laid down by the Apex Court in the judgments referred to above, the finding of the tribunal in fastening liability jointly and severally upon the appellant-RTC along with owner and insurance company is not sustainable under law and liable to be set aside.

14. In the result, the M.A.C.M.A. is allowed setting aside the findings of the tribunal to the extent of fastening liability jointly and severally upon the appellant-RTC along with respondent Nos. 4 and 5 herein. The appellant-RTC is exonerated from the liability of payment of compensation and the respondent No.4 being owner and respondent No.5 being insurer are liable to pay the compensation. The appellant-RTC is at liberty to recover the amount, if any already paid/deposited, from the insurer i.e., respondent No.5 herein. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.