(2014) 10 AP CK 0125

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. Nos. 1117 of 2013 and 2678 of 2014

The Depot Manager, Pargi Depot	APPELLANT
Vs	
R. Balamani and Others	RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Insurance Act, 1938 — Section 2(30), 64 (VB)
Motor Vehicles Act, 1988 — Section 149(2), 2(30)
Penal Code, 1860 (IPC) — Section 304-A

Citation : (2015) 1 AnWR 393

Hon'ble Judges : M. Seetharama Murti, J

Bench : Single Bench

Judgement

M. Seetharama Murti, J.—These two appeals arise out of an order dated 01.03.2013 and hence, both these appeals are heard together and are being disposed of by this common judgment.

2. Aggrieved of the award dated 01.03.2013 in M.V.O.P. No. 568 of 2008 passed by the learned Judge, Family Court-cum-Additional District Judge, Mahabubnagar ("the Tribunal"), the 3rd respondent/A.P.S.R.T.C as well as the claimants, who are the legal representatives of the deceased, had preferred these two appeals, viz., M.A.C.M.A. Nos. 1117 of 2013 and 2678 of 2014 respectively.

3. In these appeals, the parties shall hereinafter be referred to as ''the claimants'', ''the owner of the bus'', ''the insurance company'' and ''the APSRTC'' for convenience and clarity.

4. The case of the claimants, in brief, is this: "The claimants 1 to 3 are the wife and the children of the deceased-T. Rama Krishna. On 30.03.2008, at about 11.00 AM when the deceased was proceeding on his motor cycle bearing registration number AP 9BD 4655 towards Hyderabad, and on the way, when he reached the limits of Chittempally village, the driver of the bus bearing No. AP 28 X 7722, which was under hire with the APSRTC, drove the said bus at a high speed and in a rash and negligent manner and dashed the motor cycle of the

deceased from the opposite direction. As a result, the deceased fell down from the motor cycle and had succumbed to the injuries on the spot. On a report, the Station House Officer, Chevella Police Station had registered a case under Section 304-A of the IPC against the driver of the said bus. At the time of the accident, the deceased was aged 24 years and was working on contract basis as a Junior Lineman in Electricity Department and was earning Rs. 3,640/- per month and was contributing the same for the maintenance of the family. On account of the untimely death of the deceased who was the sole bread winner, the claimants had suffered pain and mental agony. Had the deceased survived, he would have had a great opportunity for securing permanent employment and he would have earned more than Rs. 10,000/- per month. The owner of the bus/insured, the insurance company, with which the bus was insured, and the APSRTC are jointly and severally liable to pay a compensation of Rs. 18 lakhs to the claimants."

5. The respondents 1 and 3 had filed counters denying the averments in the claim petition. While admitting that the 1st respondent -T. Anji Reddy was the owner of the bus, it is inter alia contended that the police had registered a case against the driver of the bus in collusion with the claimants and to enable the claimants to claim some compensation and that the said bus was insured with M/s. Bajaj Allianz General Insurance Company Limited, the 2nd respondent herein. The insurance company had also filed a counter denying the averments in the petition and inter alia stating that the bus belonged to the 1st respondent-Anji Reddy and that it was insured with the company subject to the terms and conditions and also subject to the compliance of Section 64 (VB) of the Insurance Act and that the person, who drove the vehicle, has "no relation in force" as on the date of the accident and that the driver of the bus was not holding a valid and effective driving licence and that the owner of the vehicle had handed over the bus to him with full knowledge of the said facts and that thereby, the owner had contravened the terms and conditions of the policy and that the owner had failed to comply with the mandatory provisions of law and that the accident had occurred due to the negligence on the part of the deceased, who did not possess valid and effective driving licence to drive the motor cycle, and that the deceased had also contributed to the accident and that therefore, the owner and the insurer of the motor cycle are also necessary and proper parties to the case and that the accident had occurred while the bus was under hire to the APSRTC and that therefore, the APSRTC alone is liable to pay compensation. Thus, the respondents prayed for dismissal of the claim petition.

6. During the course of trial before the Tribunal, the 1st claimant and an eye witness and other supporting witnesses were examined as P.Ws. 1 to 5 and exhibits A1 to A7 were marked on the side of the claimants. A senior Legal Executive of the Insurance Company was examined as R.W. 1 and exhibits B1 and B2 were marked on the side of the insurance company. Exhibits X1 to X4 were also marked.

7. On merits, the Tribunal had partly allowed the claim petition and had awarded

a compensation of Rs. 7,10,880/- to the claimants and had held that the owner of the bus and the APSRTC (respondents 1 and 3) are jointly and severally liable to pay the compensation awarded along with the interest @ 6% per annum from the date of the claim petition till the date of payment or realization besides proportionate costs. However, the claim petition was dismissed against the 2nd respondent-insurance company. The Tribunal had relied upon the evidence of PW2, an eyewitness who was said to be one of the passengers in the bus involved in the accident and the contents of exhibits A1 to A5 and had held that the deceased died on account of the injuries sustained in the accident and that the driver of the said bus by his rash and negligent driving was responsible for the accident. In fact, the Tribunal had awarded Rs. 6,98,880/- under the head ''loss of dependency'', Rs. 10,000/- towards loss of consortium to the 1st claimant and Rs. 2,000/- towards funeral expenses. In regard to the liability, the Tribunal had accepted the contention of the insurance company on the aspect of IMT 44 endorsement and had therefore, held that the policy issued by the insurance company in respect of the said bus does not cover the risk and that therefore, the insurance company is not liable to pay any compensation and that the owner of the bus and the APSRTC, who is the hirer of the bus, are only liable to pay the compensation. Thus, the Tribunal had exonerated the insurance company and fastened the liability on the owner of the bus and the APSRTC.

8. Not having been satisfied with the quantum of the compensation awarded, the claimants had filed MACMA No. 2678 of 2014.

9. The APSRTC had filed the other appeal in MACMA No. 1117 of 2013, having been aggrieved of the Tribunal''s finding exonerating the insurance company and fastening the liability on the APSRTC.

10. I have heard the submissions of Sri Venkatesh Gupta, the learned counsel for the claimants, Sri H. Venu Gopal, the learned counsel for the APSRTC and Sri T. Mahender Rao, the learned counsel for the insurance company.

11. The learned counsel for the claimants while submitting that the compensation awarded was inadequate had submitted that the Tribunal had erred in determining the monthly salary of the deceased at the rate of Rs. 3,640/- in spite of the evidence of P.Ws. 3 to 5 who spoke about the prospect of regularisation of the service of the deceased and a fair chance of his earning a salary of more than Rs. 12,000/- per month had he survived and continued in service of the Electricity Department. He had next submitted that the Tribunal ought to have awarded Rs. 1,00,000/- each under the heads ''loss of love and affection'', ''loss of consortium'' and ''loss of estate''. He had finally submitted that the Tribunal had failed to award adequate compensation under the relevant heads. Therefore, he prayed for allowing the appeal, M.A.C.M.A. No. 2678 of 2014 and enhancing the compensation suitably.

12. The learned counsel for the APSRTC forcefully contended that the APSRTC had only hired the bus and that the 1st respondent was the owner of the bus and

that the bus was admittedly insured with the 2nd respondent-insurance company at the relevant time and that the Tribunal erred in fastening the liability on the APSRTC and that the finding of the Tribunal that the APSRTC was liable to pay compensation along with the owner is against the ratio laid down in a Full Bench decision of this Court in The Andhra Pradesh State Road Transport Corporation and Others Vs. B. Kanaka Ratnabai and Others, . He therefore, prayed that the appeal, M.A.C.M.A. No. 1117 of 2013 be allowed and the APSRTC be exonerated from paying any compensation.

13. On the other hand, the learned counsel for the insurance company while differing with the submissions of the counsel for the APSRTC and supporting the award of the Tribunal, insofar as it related to exoneration of the insurance company, had first contended that the Tribunal had rightly not fastened the insurance company with any liability taking into consideration the fact that the said bus was under hire to the APSRTC at the relevant time. He had further urged that the possession, custody and control of the bus was with the APSRTC and that the driver was also working at its behest and that therefore, when the bus was under hire to APSRTC under a contract, the APSRTC can also be termed as owner within the meaning of Section 2(30) of the Act and that therefore, the APSRTC alone is liable along with the owner of the bus to pay the compensation, if any, payable to the claimants as rightly held by the Tribunal. He had placed strong reliance on the decision in Punya Kala Devi v. State of Assam 2014(1) Decisions Today (SC) 122 in support of the contention that since the APSRTC, which had hired the bus, was already in control and possession of the vehicle at the time of the accident, it should alone be construed as owner. He had finally submitted that no liability can be fastened against the insurance company as the registered owner, who is the 1st respondent has not paid any additional premium entitling him to give on hire the bus to the APSRTC. He, had therefore, prayed for dismissal of both the appeals against the Insurance Company.

14. In the light of the contentions and the rival contentions, the points that arise for determination in these two appeals are:

"(1) Whether the Tribunal was correct in fixing the liability on the APSRTC, who is the hirer of the bus instead on the owner/insured and insurer of the bus involved in the accident?

(2) Whether, in the facts and circumstances of the case, the compensation awarded by the Tribunal is not just and fair as contended by the claimants? And if so, whether the same requires upward revision?

(3) To what relief?"

15. POINT No. 1:

15.(a) The accident involving the bus under hire to APSRTC and the death of the deceased in the accident on account of the injuries sustained in the accident are admitted and undisputed. Though it was urged in one of the grounds of appeal filed by the APSRTC that the driver of the bus was not rash and negligent, on a perusal of the relevant evidence on record and on an earnest consideration, this Court is of the considered view that the Tribunal had properly evaluated the relevant oral evidence of the eye witness, which remained un-refuted as no other eye-witness was examined to speak to the contra, and the documentary evidence in the form of exhibits A1 to A7 and had rightly held that the pleaded accident had occurred resulting in the death of the deceased due to the rash and negligent driving of the bus by it''s driver. The evidence of PW2, who is said to be an eye witness and who was said to have travelled in the bus, which was involved in the accident, was well corroborated by the contents of the crime record, the copies of which were exhibited as exhibits A1 to A5. The police investigation had also revealed that the driver of the bus was alone responsible for the accident and hence, the police had charge sheeted him. A Division Bench of this Court in a decision in the case of Karri Nagapadma Sridevi and Another Vs. Oriental Fire and General Insurance Co. Ltd., Kakinada and Others, had held that contributory negligence is a matter of proof and not of assumption. In the decision in the case of United India Insurance Company Limited Vs. Chendri Ramaiah and Others, this Court having referred to the earlier precedents had finally held to the effect that "it follows that finding as to negligence or contributory negligence has to depend on the evidence on record and it is only in the absence of any evidence on record, the question of drawing presumptions under law or on facts can be resorted to. Evidence on record cannot be brushed aside placing reliance on probabilities and presumptions. Evidence in that particular case is the first criterion while considering the issue regarding negligence or contributory negligence." In the case on hand, though it was sought to be urged that the deceased had also contributed to the accident, no evidence was adduced in support of the said plea. On a conspectus of the facts, the evidence and the law, it can safely be held that the Tribunal was correct in holding that the pleaded accident had occurred resulting in the death of the deceased due to the rash and negligent driving of the bus by it''s driver. Be that as it may.

15.(b) Coming to the aspect of liability of the respondents to pay the compensation, it is an admitted fact that the 1st respondent is the owner of the bus and that the driver of the bus had caused the accident during the course of his employment as driver under the 1st respondent. Therefore, the 1st respondent, the owner of the bus, who is vicariously liable for the acts of his driver, is liable to pay the compensation awarded to the claimants. As already noted, the Tribunal having accepted the contentions of the insurance company that additional premium is not collected under IMT 44 had held that the insurance company cannot be fastened with any liability even in respect of third party claims. Supporting the said finding, the learned counsel for the insurance company had placed reliance on a decision in Branch Manager, Oriental Insurance Company Limited Vs. Javvaji Bhaskar Rao and Others, , wherein this Court held that the APSRTC, who is the hirer of the bus alone, was liable to pay the compensation to the claimants. He had also placed reliance on a decision in Punya Kala Devi v. State of Assam (supra). On the other hand, the learned counsel for the APSRTC in support of the contention that in a case of this nature, where the insured bus was admittedly under hire to the APSRTC, the APSRTC shall be exonerated and that the insurer shall be liable along with the owner, had placed reliance on the Full Bench decision of this Court in APSRTC v. B. Kanakaratnabai (supra).

15.(c) I have carefully gone through all the relevant decisions including the cited decisions. In the decision in B. Kanakaratnabai (supra), the issue referred to the Full Bench for a decision is as to where the liability would lie for payment of compensation in respect of claims of passengers/third parties arising out of accidents, involving insured vehicles hired by the APSRTC. Therefore, the question ''whether the compensation in such cases would have to be paid by the owner of the vehicle or by the insurance company or by the APSRTC or by some or all of them'' was the question that fell for consideration and determination by the Full Bench of this court. The Full Bench of this Court had referred to all the relevant decisions including the decisions of the Supreme Court in Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., , Rikhi Ram and Another Vs. Smt. Sukhrania and Others, , Uttar Pradesh State Road Transport Corporation Vs. Kulsum and Others, and of this Court in Branch Manager, Oriental Insurance Company Limited, City Branch Office-II, Vijayawada v. Javvaji Bhaskar Rao and others (supra) and had held as under:

"88. On principle, it is not open to the insurance companies to absolve themselves of liability towards passengers/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 and Others Vs. Yaseen Fatima and Others, , 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."

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90. 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. We, therefore, affirm the view taken by the Full Bench of this Court in Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, , which was approved and upheld by the Supreme

Court in G. Govindan Vs. New India Assurance Co. Ltd. and Others, and applied thereafter in Rikhi Ram and Another Vs. Smt. Sukhrania and Others, ".

The ratio in the Full Bench decision squarely applies to the facts of the case on hand as the question now under consideration fell for determination directly in the said decision. Admittedly, the 1st respondent was the owner and the 3rd respondent was the insurer of the vehicle at the relevant time and the APSRTC was the hirer of the bus as on the date of accident. Further, in the instant case, the insurance company had exhibited B1- the copy of the policy of insurance. And, it was sought to be contended that admittedly no premium under IMT 44 was collected and that therefore, the owner is precluded from giving the bus on hire to third parties and that in a case of this nature, where the owner gave the bus on hire to the APSRTC, he was not well within his right and that therefore, the owner who had given the bus on hire and the APSRTC, which had taken it on hire, are both jointly and severally liable to pay the compensation, if any, payable to the claimants and that the insurance company cannot be fastened with any liability as rightly held by the Tribunal. The sum and substance of the contentions of the learned counsel for the Insurance Company is that once additional premium was not collected by the Insurance Company enabling the hiring of the insured vehicle, the insurance company would not be liable even in respect of third party claims thereafter. It is also contended that in the absence of the additional premium paid under IMT 44, the bus let out on hire to the APSRTC did not continue to be covered by the Insurance Policy issued to the owner of the vehicle and hence the Insurance policy does not cover third party risks even in respect of the bus given on hire to the APSRTC. It is pertinent to note that in the cited case (supra), the Full Bench of this Court had considered contentions on similar lines advanced on behalf of the insurance companies and had not accepted the said contentions while inter alia holding as follows:

"74. It is not in dispute that the Insurance Companies insured the buses taken on hire by the APSRTC which were thereafter involved in accidents giving rise to passenger/third party claims for compensation. The Insurance Companies admittedly collected premium towards passengers/third party risks. Such passengers/third parties would therefore be entitled to lay claims against the Insurance Companies on the basis of these policies, notwithstanding the fact that there may have been a transfer of the possession of the vehicles without intimation to the Insurance Companies pursuant to the hiring of the buses by the APSRTC. As pointed out in Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, , such violation, if at all, would have effect on the proprietary interest and not upon the insurable interest vis-a-vis the passengers/third parties covered by the Insurance Policy."

Further in paragraph 86 of the judgment the Full Bench of this Court had held as follows:

"......Once separate premium was collected by the Insurance Companies for covering the risk to the passengers and third parties, it is no longer open to them to escape their liability in this regard. The failure in paying the additional premium as per IMT. 44, at best, would absolve the Insurance Companies from covering the liability and loss, if any, of the APSRTC. It would not extend to protect the Insurance Companies from their acknowledged liability towards third parties as is evident from the policy documents. The Supreme Court in Rikhi Ram and Another Vs. Smt. Sukhrania and Others, in no uncertain terms, held that whenever a vehicle covered by an Insurance Policy was transferred to a transferee, the liability of the insurer would not cease so far as the third party/ victim is concerned, even if the owner or purchaser did not give intimation as required under the provisions of the Act. The case on hand stand on a better footing as the insured, being the owner of the vehicle, did not transfer the title or ownership of the vehicle but only its possession. IMT. 44, as pointed out earlier, has application when the hirer of the vehicle requires protection and it does not apply to or abridge the liability of the Insurance Company in so far as third party risks are concerned."

Therefore, the contentions now advanced on behalf of the insurance company before this Court cannot be countenanced. The learned counsel for the Insurance Company had next placed reliance on Section 2(30) of the Motor Vehicles Act, 1988, which says that ''owner'' means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement. He had also relied upon the decision in Godavari Finance Co. Vs. Degala Satyanarayanamma and Others, . While referring to this case, the Full Bench of this Court had observed in the decision in B. Kanakaratnabai (supra) as under: "The Supreme Court was dealing with a claim arising out of an accident involving a vehicle held under a hire purchase agreement. It was held that ordinarily the financier cannot be treated to be the owner, as the person who is in possession of the vehicle under the hire purchase agreement would have control over the vehicle and would therefore be liable to pay compensation for the accident. The Supreme Court opined that what is essential is to find out the liabilities of the persons involved in the use of the vehicle and the persons who are vicariously liable. In the event the owner of the vehicle is found to be liable, the Insurance Company would be consequently liable having entered into a contract of insurance with the owner. The Supreme Court therefore concluded that there could be no doubt whatsoever that possession/control of the vehicle played a vital role. So opining, the Supreme Court had held that the person holding the vehicle under the hire purchase agreement would be liable to the exclusion of the financier/registered owner of the vehicle." Reliance was next placed on the decision in National Insurance Co. Ltd. Vs. Deepa Devi and Others, . As referred to in the Full Bench decision in B.Kanakaratnabai (supra), the facts and findings in this cited case are as under: "In this decision the Supreme Court dealt with a fact situation where an insured car, along with its driver, was requisitioned by the State for election duty. The vehicle thereafter met with an accident resulting in a third party claim for compensation. As per the terms of the Insurance Policy, the car was to be used only for ''social, domestic and pleasures and insured''s own purpose''. The Motor Accidents Claims Tribunal upheld the contention of the Insurance Company that under the terms of the Insurance Policy, it was not liable to reimburse the owner of the vehicle for payment of compensation on account of the accident. The High Court, however, set aside this order holding the owner of the vehicle, the State Government and the Insurance Company jointly and severally liable to pay the compensation. Before the Supreme Court, the Insurance Company contended that as the vehicle in question was not used for the purpose for which the contract of insurance was entered into and having regard to the definition of ''owner'' in the Act of 1988, the judgment of the High Court holding it liable could not be sustained. The Supreme Court had held that the State would be liable to pay the compensation to the claimants and not the registered owner of the vehicle." Suffice if it is observed that the Full Bench had also considered the above decisions now relied upon by the learned counsel for the insurance company and several other decisions of this Court including the decisions in P. Satyanarayana Vs. Kesari Manevva, Gummadi Prasad, National Insurance Company and The A.P.S.R.T.C., and The New India Assurance Co. Ltd. V. Suram Ramulamma 1989 (2) ALT 270. While referring to the facts and the ratio in this case (supra) the Full Bench had held in B.Kanakaratnabai case (supra) as follows:

"In The New India Assurance Co. Ltd. v. Suram Ramulamma (supra), a learned Single Judge of this Court was dealing with an Insurance Policy which excluded the liability of the Insurance Company in case of contravention of any clause therein. The vehicle which was so insured was requisitioned by the State and thereafter met with an accident giving rise to a claim for compensation. The Claims Tribunal held the Insurance Company liable to pay the same. Aggrieved, the Insurance Company came before this Court. The learned Judge was of the opinion that the Insurance Company''s liability during the period of requisition stood excluded under the terms of the policy. Referring to Section 94(2) of the Act of 1939 and Clause-9 of the policy, the learned Judge held that the liability stood transferred to the State during the period of requisition as the vehicle was requisitioned and the owner had no right over the vehicle thereafter. The learned Judge specifically observed that the Insurance Company''s liability in respect of a vehicle requisitioned by the State stands on a different footing when compared to a vehicle hired to a third party for a limited purpose. The learned Judge accordingly concluded that the State alone was liable to pay the compensation."

Coming now to the decision in Punya Kala Devi V/s State of Assam and another (supra), it is to be noted that reliance was placed on this decision in support of the contention that the definition of the ''owner'' as contained in section 2(30) of the Insurance Act would include a person in possession of a vehicle either under an agreement of lease or an agreement of hypothecation or under a hire-purchase agreement and that the person in control and possession of the vehicle should be construed as the ''owner'' and not alone the registered owner. The facts of the case show that the SDO, Udaigiri had requisitioned the bus belonging to the owner under the Assam Act and the accident resulting in the death of a person had occurred while the bus was under requisition and that at that time the vehicle was not insured. Therefore, the State was held liable. When a vehicle is requisitioned as per the provisions of a Statute by a statutory authority the owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle. In the case of hire to a third party, the owner gives the vehicle on hire at his own volition and free will and there is no element of compulsion. Whereas, when a vehicle was requisitioned by the State, there is no option and therefore, there is an element of compulsion. In the above cited case, neither the insurance company nor the APSRTC are parties. Therefore, the decision is not helpful to the insurance company as there is nothing to suggest from the facts and the ratio of the decision that the insurance company is to be exonerated; once separate premium was collected by the Insurance Company for covering the risk to the passengers and third parties, it is no longer open to it to escape the liability. It is important to refer to the definition of ''owner'' in the present context.

"Section 2(30) of the Act of 1988 defines ''owner'' as under:

(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

Keeping in view the present context, it may be noted that the definition refers only to a hire-purchase agreement, an agreement of lease and an agreement of hypothecation but does not refer to an agreement in regard to hire of vehicle or a transaction of hire. An agreement in regard to hiring of a vehicle or hiring agreement is different from all the above three agreements. A transaction of hire is different from all the other transactions viz., lease, hire-purchase and hypothecation. It cannot be disputed that hire is totally different from hire purchase and hypothecation. There is also a basic difference between "lease" and "hire". A transaction of hire in one view of the matter is essentially a contract of bailment of a vehicle since transfer of a right only to use the vehicle is also species of bailment. In the case of a hire, only a licence is given to the hirer to use the vehicle for a temporary period for which the vehicle is hired. In a transaction of lease, which is essentially different from licence, there is a transfer of interest in the property during the period of lease. However, in a transaction of hire there is no such transfer of interest but there is only transfer of possession. Therefore the submissions based on the meaning of ''owner'' are not helpful to the insurance company. Be that as it may. The failure in paying the additional premium as per IMT 44 would not extend to protect the Insurance Company from it''s acknowledged liability towards third parties as is evident from the policy document. Further, the Supreme Court in Rikhi Ram (supra), in no uncertain terms, held that whenever a vehicle covered by an Insurance Policy was transferred to a transferee, the liability of the insurer would not cease so far as the third party/victim is concerned, even if the owner or purchaser did not give intimation as required under the provisions of the Act. The case on hand stands on a better footing. In this regard the relevant findings of the judgment of the Full Bench, which were already referred to supra are restated infra for emphasis.

"Notwithstanding the hiring of insured buses by the owners to 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 1988/section 96(2) of the Act of 1939 are made out. We, therefore, affirm the view taken by the Full Bench of this Court in Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, , which was approved and upheld by the Supreme Court in G. Govindan Vs. New India Assurance Co. Ltd. and Others, and applied thereafter in Rikhi Ram and Another Vs. Smt. Sukhrania and Others, ."

Be it noted that the later Full Bench judgment affirmed the earlier view taken by the former Full Bench of this Court which was approved and upheld by the Supreme Court. It is well settled, vide the decision of a Larger Bench of the Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , that the courts shall not place reliance on decisions without discussing as to how the factual situation in the case on hand, fits in with the fact situation of the decision on which reliance is placed. In the well considered view of this Court the judgment of the Full Bench in the decision in APSRTC v. B.Kanakaratnabai (supra) directly relevant to the point still holds the field and is binding on this court. Viewed thus, this Court finds that the contention of the insurance company that it is entitled to be exonerated is devoid of merit. Accordingly the said contention stands rejected and the award of the Tribunal holding the insurance company not liable stands set aside. In view of the precedential guidance, which is binding, it must be held that notwithstanding the hiring of insured bus by the 1st respondent-owner to the 3rd respondent-APSRTC, the 2nd respondent-insurance company shall be liable for payment of the compensation arising out of the third party claim as any of the grounds in section 149(2) of the Act 1988/section 96(2) of the Act of 1939 are not made out and the contentions raised by the insurance company are devoid of merit. Therefore, the point is answered accordingly in favour of the APSRTC, the appellant in M.A.C.M.A. No. 1117 of 2013 holding that the APSRTC cannot be held liable to pay the compensation payable to the claimants and that therefore, the insurance company and the owner of the vehicle shall be jointly and severally liable to pay the compensation payable to the claimants.

16. POINT No. 2:

16.(a) The question that remains for consideration is -- ''Whether the compensation awarded by the tribunal was not just and fair as contended by the claimants and, if so, what is the just compensation awardable to the claimants?''

The claimants, who had filed the appeal in M.A.C.M.A. No. 2678 of 2014 questioning the inadequacy of compensation, would contend that the Tribunal had erred in determining the monthly salary of the deceased @ Rs. 3,640/- in spite of the evidence of P.Ws. 3 to 5 who spoke about the prospect of regularisation of the service of the deceased and a fair chance of his earning a salary of more than Rs. 12,000/- per month had he survived and continued in service of the Electricity Department. The undisputed fact is that the deceased was working as a Junior Lineman on an yearly contract basis on a consolidated pay of Rs. 3,640/- per month at the time of the accident. Therefore, he is not a permanent employee. No doubt, evidence was adduced by examining PWs 3 to 5 to the effect that the services of the deceased would have been regularised and he would have drawn a salary of Rs. 12,844/- with a basic pay of Rs. 9,780/- on such permanent employment as Junior Lineman had he not met with the accident and had survived and continued in service. Exhibits X1 to X4 were also marked in this regard. The evidence of PW3 also would show that the services of some of the junior linemen, who were appointed along with the deceased on yearly contract basis, were regularised and that therefore, the services of the deceased also would have been regularised and he too would have been absorbed as a permanent employee had he not met with the accident and survived. Therefore, based on this evidence, it was contended on behalf of the claimants that the deceased had good and certain prospects of securing permanent employment on regularisation and that therefore, the salary ought to have been determined @ Rs. 12,000/- per month. However, the learned counsel for the APSRTC and the insurance company would contend that the deceased is only a temporary employee that too, on yearly contract basis and there is no certainty of his continuation as Junior Lineman even on contract basis after a period of one year and that in any view of the matter, there is no certainty of his securing a permanent employment and therefore, on assumptions and probabilities, the income cannot be determined ignoring the actual salary/income of the deceased at the relevant time. As rightly contended, the uncertainties and imponderables cannot be totally ignored. In the decision in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Supreme Court held that where the deceased was on a fixed salary without provision for annual increment etcetera, the courts will usually take only the actual income at the time of the death. Nevertheless, considering the prospects of the deceased and also considering the fact that the age of the deceased was below 40 years, an addition of 50% of actual salary to the actual salary income of the deceased was made and the salary after considering the future prospects was determined at Rs. 5,640/- per month. The annual income was worked out and a 1/3rd towards the personal and living expenses of the deceased was deducted and the multiplicand was taken as Rs. 43,680/-. Applying the appropriate multiplier ''16'', the compensation under the head ''loss of dependency'' was arrived at Rs. 6,98,880/-. Therefore, the procedure adopted by the Tribunal in determining the multiplicand cannot be held to be wrong and therefore, the contentions of the claimants cannot be countenanced.

16.(b) Coming to the amounts of compensation awarded under the other heads by the Tribunal, it is to be noted that the Tribunal had awarded Rs. 10,000/- towards loss of consortium to the 1st claimant, who is the wife of the deceased and Rs. 2,000/- towards funeral expenses. The learned counsel for the claimants having placed reliance on the decisions of the Supreme Court contended that the tribunal ought to have awarded Rs. 1,00,000/- each under the heads ''loss of love and affection'', ''loss of consortium'' and ''loss of estate''. The above amounts awarded by the Tribunal are not in accordance with the ratios in the precedents. In the decision in Anjani Singh and Others Vs. Salauddin and Others, , the Hon''ble Supreme Court by following the ratio in a three Judge Bench decision in Rajesh and Others Vs. Rajbir Singh and Others, had awarded in that case Rs. 25,000/- towards funeral expenses and Rs. 1,00,000/- each towards loss of love and affection for the children and loss of consortium to the wife of the deceased. Now it is pertinent to refer to the decision in the case of Rajesh and Others vs. Rajbir Singh and others [supra], wherein, the Hon''ble Supreme Court held to the following effect: " ''Funeral expenses'' does not mean the fee paid in the crematorium or the fee paid for the use of space in the Cemetery and that there are many other expenses in connection with the funeral, besides expenses associated with religious practices and conventions and all those religious practices and conventions are very expensive." The Hon''ble Supreme Court also held that it would only be just and reasonable that the Courts award at least Rs. 1,00,000/- (Rupees One Lakh Only) towards loss of consortium. In the above precedent the Hon''ble Supreme Court had further awarded Rs. 1,00,000/- (Rupees One Lakh Only) towards loss of care and guidance towards minor children while awarding Rs. 25,000/- (Rupees Twenty Five Thousands Only) towards funeral expenses. In the above precedent, the petitioners are the widow and the minor children of Bijender Sing, the deceased, who was aged about 33 years at the time of accident. Following the precedential guidance, a sum of Rs. 1,00,000/- (Rupees One Lakh Only) is awarded to the first claimant towards loss of consortium and Rs. 1,00,000/- (Rupees One Lakh Only) is awarded towards loss of care and guidance for minor children and Rs. 25,000/- (Rupees Twenty Five Thousands Only) is awarded towards funeral expenses. Further, Rs. 5,000/- (Rupees Five Thousands Only) each is awarded under the two conventional heads ''loss of estate and transport expenses''.

16.(c) Accordingly, the claimants are entitled to the following compensation amounts:

(Rupees Nine lakhs Thirty Three thousands and eight hundred and eighty only)

16.(d) Thus, the total and just compensation to which the claimants are entitled to as determined by this Court is Rs. 9,33,880/-. However, the Tribunal had awarded compensation of Rs. 7,10,880/-. Therefore, it follows that the compensation is enhanced by Rs. 2,23,000/-. The point is accordingly answered holding that the claimants are entitled to a total compensation of Rs. 9,33,880/- instead of Rs. 7,10,880/- determined by the Tribunal. The claim petition against the APSRTC shall stand dismissed.

17.(a) In the result, M.A.C.M.A. No. 1117 of 2013 filed by the APSRTC is allowed without costs holding that the 3rd respondent/the APSRTC is not liable and is therefore, exonerated from paying the compensation awarded to the claimants and that the 1st respondent/the owner of the vehicle and the 2nd respondent/ insurance company are jointly and severally liable to pay the compensation awarded to the claimants.

17.(b) In the result, MACMA No. 2678 of 2014 filed by the claimants is allowed in part without costs and the compensation is enhanced by Rs. 2,23,000/- and the same is accordingly awarded with interest at 6% p.a. from the date of the petition till the date of payment or realization. In view of the finding in M.A.C.M.A. No. 1117 of 2013 exonerating the APSRTC (3rd respondent) from the liability to pay the compensation and fastening the liability to pay the compensation, jointly and severally, upon the owner of the vehicle (1st respondent) and the insurance company (2nd respondent), the said respondents 1 and 2 are only liable to pay the compensation amount including the enhanced compensation. The owner of the vehicle and the insurance company (the respondents 1 and 2 in the claim application) shall deposit the entire compensation including the enhanced compensation amount with interest and costs within two months from today. The amount of compensation, if any, deposited to the credit of the original petition before the Tribunal by the APSRTC shall be refunded to it in entirety. As a sequel to the disposal of both the appeals, the miscellaneous applications, if any, pending in these appeals shall stand closed.