

(2017) 08 RAJ CK 0020
In the Rajasthan High Court
Case No : 106 of 2000

The General Manager, Rajasthan State Road Transport
Vs

APPELLANT

Hari Prasad s/o Shri Bal Kishanji Tinwari

RESPONDENT

Date of Decision : 10-08-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173](#),
[Section 173](#) - Appeals

Citation : (2017) 08 RAJ CK 0020

Hon'ble Judges : Arun Bhansali

Bench : SINGLE BENCH

Advocate : L.K.Purohit, G. Vaishnav, Nitesh Mathur, Manish Shishodia

Judgement

1. This appeal is directed against the judgment and award dated 17/9/1999 passed by Motor Accident Claims Tribunal, Chittorgarh ("the Tribunal"), whereby, the Tribunal awarded a sum of Rs.90,220/- as compensation against the appellant Corporation and has exonerated the owner of the bus along with Insurance Company.
2. The application for compensation was filed by Hari Prasad for the injuries suffered by him while travelling in bus No. RJ-14-P-2795.
3. The application for compensation was contested by the owner of the vehicle as well as the Corporation with which the vehicle was attached/on contract.
4. The Insurance Company also contested its liability to make

payment of amount of compensation on the ground that the vehicle in question was on contract with the appellant Corporation, and as the Insurance Company had contracted for compensating the owner i.e. non-claimant no.4, the Insurance Company cannot be saddled with the liability.

5. The Tribunal after hearing the parties, relying on the judgment in the case of RSRTC vs. Kailash Nath Kothari & Ors : (1997) 7 SCC 481, came to the conclusion that owner of the vehicle as well as the Insurance Company were not liable and it was only the Corporation which was liable for making payment of amount of compensation.

6. Feeling aggrieved, the appellant Corporation has filed the present appeal.

7. It is submitted learned counsel for the appellant that the Tribunal committed error in relying on the judgment in the case of Kailash Nath Kothari (supra) and that the said judgment has subsequently been considered by the Hon''ble Supreme Court in the case of Uttar Pradesh State Road Transport Corporation vs. Kulsum & Ors . : (2011) 8 SCC 142, wherein, it has been laid down that the Insurance Company cannot escape its liability and that the judgment in the case of Kailash Nath Kothari (supra) pertained to the Motor Vehicles Act, 1939, the same would not have no application.

8. Learned counsel appearing for the Insurance Company submitted that the Tribunal was justified in coming to the conclusion that the Insurance Company was not liable to make payment of amount of compensation and the case is covered by the judgment in case of Kailash Nath Kothari (supra), which does not require any interference.

9. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

10. The Hon"ble Supreme Court in Kulsum (supra) while considering the case of Kailash Nath Kothari (supra) inter alia laid down as under:

"18. In our considered opinion, in the light of the drastic and distinct changes incorporated in the definition of "owner" in the old Act and the present Act, Kailash Nath case has no application to the facts of this case. We are unable to persuade ourselves with the specific question which arose in this and connected appeals as the question projected in these appeals was neither directly nor substantially in issue in Kailash Nath case. Thus, reference to the same may not be of much help to us. Admittedly, in the said case, this Court was dealing with regard to earlier definition of "owner" as found in Section 2(19) of the old Act. 19. Section 2(19) of the Motor Vehicles Act, 1939 is reproduced hereinbelow: "2. (19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire- purchase agreement, the person in possession of the vehicle under that agreement;" 20. A critical examination of both the definitions of the "owner" would show that it underwent a drastic change in the Act of 1988, already reproduced hereinabove. In our considered opinion, in the light of the distinct changes incorporated in the definition of "owner" in the old Act and the present Act, Kailash Nath Kothari case shall have no application to the facts of this case." "41. In the light of the aforesaid discussion, the appeals of the Corporation are allowed. The impugned judgment and order passed by the High Court qua the Corporation are hereby set aside and quashed and we hold that the Insurance Company would be liable to pay the amount of compensation to the claimants."

11. Admittedly, the accident in the present case took place on 2/7/1995 and the provisions applicable would be of the Act of 1988 and, therefore, the Tribunal was not justified in relying on the judgment in the case of Kailash Nath Kothari (supra), which pertained to a case which arose under the Act of 1939.

12. In view of the above discussion, the direction of the Tribunal exonerating the owner and the Insurance Company cannot be sustained.

13. Consequently, the appeal of the Corporation is allowed. The judgment and award dated 17/9/1999 is modified to the extent that along with the appellants, the owner of the bus as well as Insurance Company would be jointly and severally liable for

making payment of amount of compensation as awarded by the Tribunal.

14. Learned counsel for the appellant submitted that amount of Rs.25,000/- was deposited by the appellant under proviso to Section 173 of the Act of 1988 at the time of filing of the appeal and while admittedly the appeal, rest of the award was stayed by this Court.

15. In view of the above, the Insurance Company is directed to make payment of the balance amount of award along with interest as awarded within a period of six weeks to the claimant/claimants. Further, the amount paid by the appellant Corporation would also be refunded back along with interest @ 7% p.a. from the date the amount was deposited by the appellant Corporation till the date of actual payment.