
(2014) 02 AP CK 0150
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 1753 of 2009

The Oriental Insurance Company Limited	APPELLANT
Vs	
Shaik Alia Bakash	RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2015) 2 ALLMR 89

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : Meduri Vara Prasada Rao, Advocate for the Appellant; V.R. Reddy Kovvuri, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the award dated 16.04.2008 in M.V.O.P. No. 425 of 2005 passed by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kadapa (for short "the Tribunal"), the 2nd respondent/Oriental Insurance Company Limited preferred the instant M.A.C.M.A.

2. The appellant/Insurance Company is the 2nd respondent in the O.P.; 1st respondent in the appeal is the claimant in the O.P. 2nd respondent in the appeal is the 1st respondent in the O.P and 3rd respondent/A.P.S.R.T.C. in the appeal is the 3rd respondent in the O.P.

3. The factual matrix of the case is thus:

a) On 02.05.2005 at about 7.00 pm when the claimant and some others were travelling in an auto bearing No. AP 04-U 7416 and proceeding on Kadapa - Rayachoty road and on the way when the auto reached Mandavya river bridge, an A.P.S.R.T.C. hired bus bearing No. AP-03 U 6323 came from Kadapa side, being driven by its driver at high speed and in a rash and negligent manner and dashed the auto and thus caused the accident. In the resultant accident, the claimant suffered injuries to his head, fracture to his left forearm and fracture to

left upper arm besides others injuries. He was taken to Government Hospital, Rayachoty and from there to S.V.R.R.G. Hospital, Thirupathi, where he was treated.

b) It is pleaded that the accident was occurred due to the fault of bus driver. On these pleas, the claimant filed M.V.O.P. No. 425 of 2005 against the respondents 1 to 3 who are the owner, insurer and A.P.S.R.T.C. and claimed Rs. 2,00,000/- as compensation.

c) 1st respondent remained ex parte. Respondents 2 and 3 filed counters and opposed the claim by denying all the material averments in the petition.

d) The 2nd respondent/Insurance Company contended that since the owner/1st respondent hired the bus along with driver to A.P.S.R.T.C. and accident was occurred during the possession of 3rd respondent, the A.P.S.R.T.C. shall pay compensation to the claimant. On this main ground, R.2 disowned its liability. Additionally, respondent No. 2 contended that the claim under different heads is excessive and exorbitant and prayed for dismissal of the M.V.O.P.

e) Whereas the 3rd respondent/A.P.S.R.T.C. contended that it is not the owner of crime bus and the driver was also not its servant but the servant of the 1st respondent. As per the conditions of agreement dated 02.07.2004, respondent Nos. 1 & 2 are liable to pay compensation. Clause 5 (iv) of the agreement refers to liability of the owner of the bus to compensate the loss suffered by persons due to accident and A.P.S.R.T.C. under no circumstances shall be liable. It further contended that the claim under different heads is excessive and prayed to dismiss the petition.

f) During trial, the claimant was examined as P.W.1 and documents filed by him were marked as Exs.A.1 to A. 8. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B1 to B3 were marked.

g) A perusal of the award would show that issue No. 1 is concerned, the tribunal having regard to the oral evidence of P.W.1 coupled with Ex.A1-FIR, Ex.A2 - Charge sheet came to conclusion that the accident was occurred due to rash and negligent driving of bus by its driver.

h) So far as the liability is concerned, the tribunal on a perusal of decisions cited by either side and referring the relevant provisions of Motor Vehicles Act, held that merely because the vehicle was hired by A.P.S.R.T.C., the ownership of the vehicle will not seize with its real owner and the liability of insurance company also will not seize. Thus, the tribunal at the end of para No. 14 of the award held that the 2nd respondent - Insurance company alone is responsible for payment of compensation to the claimant as the policy subsisted at the time of accident and no conditions of the policy were violated by respondent No. 1.

i) Quantum of compensation is concerned, the tribunal having regard to the oral evidence of P.W.1 and Exs.A3 to A8, medical record granted a sum of Rs. 89,000/- as compensation under different heads as below:

Thus, the tribunal granted in all compensation of Rs. 89,000/- with proportionate costs and simple interest at 7.5% per annum from the date of O.P till the date of realization against the respondents 1 and 2 and dismissed the claim against respondent No. 3.

4. In the grounds of appeal the appellant impugned the award of the tribunal in fixing the liability on the insurance company. It contended that in view of the judgment of Apex Court rendered in the case of Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., , the Tribunal ought to have fixed the responsibility on the A.P.S.R.T.C.

5. Heard arguments of Sri Meduri Vara Prasada Rao, learned counsel for appellant and Sri V.R. Reddy Kovvuri, learned counsel for respondent No. 1.

6. During the arguments, both the counsel have brought to the notice of this Court the Full Bench Judgment reported in The Andhra Pradesh State Road Transport Corporation and Others Vs. B. Kanaka Ratnabai and Others, and submitted that the appeal may be disposed of in terms of the covered judgment.

7. In the light of the above arguments, the point for determination in this appeal is:

Whether the Tribunal was right in fixing the responsibility on appellant/Insurance Company?

8. POINT: The accident, involvement of A.P.S.R.T.C. hired bus and injuries to the claimant are not in dispute. The Tribunal, as stated supra, has fixed the liability on the owner and insurer of the hired bus while absolving the A.P.S.R.T.C.. The contention raised by the appellant is no more res Integra in view of the Full Bench judgment of this Court reported in A.P.S.R.T.C. vs. B. Kanakaratanabai and others (2 Supra). The prime point for determination in that case was whether the compensation payable in respect of claims arising out of accident involving insured buses hired by A.P.S.R.T.C. should be born by the owner of the vehicle, the Insurance Company, the A.P.S.R.T.C. or by some or all of them. On a conspectus of a catena of judgments including Rajasthan State Road Transport Corporation vs. Kailash Nath Kothari's case (Supra), the Full Bench ultimately held thus:

Mere hiring of insured buses by the owners to the A.P.S.R.T.C. 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 A.P.S.R.T.C., the Insurance Companies shall be solely and exclusively liable for payment of compensation arising out "of such passengers/third party claims unless any of the grounds in Section 149(2) of the M.V. Act of 1988/Section 96(2) of the Act of 1939 are made out.

9. In view of the above authoritative pronouncement by Full Bench of this High

Court, the contention of the appellant - Insurance Company cannot be countenanced.

10. In the result, I find no merits in the appeal and accordingly, the same is dismissed by confirming the award passed by the Tribunal in M.V.O.P. No. 425 of 2005. No order as to costs.

Miscellaneous applications, if any, pending in this appeal shall stand closed.