

Apsrtc Vs. K. Suseelamma and ors.

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Court : Andhra Pradesh

Decided On : Dec-02-2003

Reported in : II(2004)ACC81; 2005ACJ559; 2004(1)ALD770; 2004(3)ALT570

Judge : Ghulam Mohammed, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 2(30) 146(1) and

Appeal No. : CMA Nos. 2256, 2385, 2408, 2409, 2581 and 2583 of 2003

Appellant : Apsrtc

Respondent : K. Suseelamma and ors.

Advocate for Def. : P.V.V. Satyanarayana, Adv. for Respondent Nos. 1 to 4 in CMA Nos. 2256 and 2409 of 2003, for Respondent No. 1 in CMA Nos. 2385, 2408 and 2583 of 2003 and for Respondent Nos. 1 to 5 in CMA No. 2385 of

Advocate for Pet/Ap. : P. Vinayaka Swamy, SC

Disposition : Appeal allowed

Judgement :

Ghulam Mohammed, J.

1. All these appeals are filed by Andhra Pradesh State Road Transport Corporation (APSRTC) against the common order dated 19-2-2003 in O.P. Nos.

71, 75, 70, 78, 77 and 72, respectively, on the file of the Motor Accidents Claims Tribunal, Kurnool, fastening the liability on the appellant Corporation and exonerating the insurance company from its liability in respect of the accident caused on 2-11-2000. Hence, these appeals are clubbed and heard together and are being disposed of by this common judgment.

2. The brief facts of the case are that the claimants filed the above OPs claiming compensation from APSRTC and insurer of the bus involved in the accident. On 2-11-2000 at about 9.30 p.m., near KM Stone 178/4 on the National Highway No. 7 when the claimants and the deceased were travelling in an auto bearing No. AP-21T-3070 from Gadwal to Dharmavaram Village, a bus bearing No. AP-21T-8333 driven by its driver in a rash and negligent manner dashed against the auto. All the passengers in the auto including the injured claimants and auto driver sustained multiple injuries in the accident and they were all shifted to the Government General Hospital, Kurnool, for treatment and the driver Gokari, Golla Chinna Hussain and Boya Chinna Beesanna died while undergoing treatment in the hospital. A case in Crime No. 28 of 2000 was registered by Kondandapur Police. The injured claimants and the dependents of the deceased filed the said OPs claiming compensation from the owner of the bus, APSRTC and insurer of the bus involved in the accident.

3. The fifth respondent herein is the owner of the bus and APSRTC is the hirer of the said bus, which is insured with New India Assurance Company Limited.

4. Since the claim arose from the same accident, PWs. 1 to 12 were examined and Exs.A-1 to A-17 marked on behalf of the claimants and RWs. 1 and 2 were examined on behalf of the owner of the bus, APSRTC and the insurance company and Exs.B-1 to B-6 were marked. The Tribunal after considering the evidence on record and the submissions on either side, fastened the liability on the APSRTC and exonerated the insurance company of its liability.

5. Heard learned Counsel for the appellant Corporation, learned Counsel for the claimants and learned standing Counsel for the respondent insurance company,

6. Learned Counsel for the appellant Corporation has drawn my attention to the terms and conditions of the agreement entered into between the owner of the bus and APSRTC who is the hirer of the bus. Clause 5 of the Agreement reads as under:

'(i) The owner shall keep the bus road worthy in terms of Chapter-VI of the M.V. Act, 1988 and Rules made thereunder from time to time by carrying out necessary maintenance and repairs at his own cost.

(ii) The owner shall keep his vehicle duly insured to cover third party risk and shall also pay the M.V. Taxes and other taxes and levies payable as a consequence of the operation of the above vehicle to all the authorities concerned.

(iii) It is mutually agreed that the corporation shall not be responsible for any damage or loss caused to the. vehicle hired during the period of agitations accident etc.

(iv) The owner shall be responsible for all claims that may arise due to statutory violations out of the operations like claim due to accidents payable under the provisions of M.V. Act/Rules and APSRTC shall under no circumstances be made liable or responsible to pay compensation that may awarded by Motor Accidents Claims Tribunal or Tribunals in respect of accidents.

(v) It ensure be the responsibility of the owner to make arrangement for proper prosecution of proceedings either before the Motor Accidents Claims Tribunal or Tribunals, Commissioner for Workmen Compensation, RTA and STA.'

7. Learned Counsel for the appellant also contends that the vehicle is insured with the third party and the APSRTC is not the insured and the Corporation was plying the bus on the road as on the date of the accident. As such, the owner and insurer of the vehicle involved in the accident are liable to pay the compensation. Further, Ex.P-3 is the insurance policy valid from 4-3-2000 to 3-3-2001 and the respondent-insurance company has indemnified the owner of the bus involved in the accident. The learned Counsel for the appellant has drawn my attention to Section 2(30) of the Motor Vehicles Act which reads as under:

' 'Owner' means a person in whose name a motor vehicle stands registered, and where such person is 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.'

8. The Division Bench of this Court in Depot Manager, APSRTC, Miryalaguda v. P. Sujatha, : 2003(5)ALD586 (DB), while dealing with Section 146(1) read with Section 2(30) of the [Motor Vehicles Act, 1988](#) and the liability of the hirer of the bus involved in the accident, observed and held as under:

'When as per Section 2(30) of the [Motor Vehicles Act, 1988](#) appellant, as 'lessee' of the bus, is the 'owner' of the bus, and when there is nothing on record to show that the de jure owner i.e., fifth respondent, provided 'his' driver to the appellant with a direction to act under 'his' control, it would be a surmise to say that the driver of the owner i.e., fifth respondent, was acting under his, i.e., fifth respondent's control at the time of the accident, but not under the control of the hirer. The appellant did not adduce any evidence to show that it has no control over the driver, or to establish that the driver appointed by the fifth respondent, while under the control of the fifth respondent was driving the bus at the time of accident. Obviously keeping in view the wider definition of the word 'owner' given in [Motor Vehicles Act, 1988](#) the Supreme Court Kailash Nath Kothari case, : AIR 1997 SC3444 must have held that narrow interpretation to the word 'owner' in Motor Vehicles Act, 1939 cannot be given, and that word should include the person who hired the vehicle. When the appellant is the 'owner' as per the legal fiction created by Section 2(30), it, as owner, would be liable for the acts committed by the person driving the bus as per its directions. Obviously at its instructions and directions only the bus must be plying in that route at the time of the accident.

16..... It is no doubt true that as held in Sunitha Rathi case, : AIR 1997 SC4228 , the liability of the insurer arises only after the liability of the insured is fixed. In this case, it is the fifth respondent that is the de jure owner of the bus involved in the accident, and he took out the insurance with sixth respondent and gave the vehicle

on hire to the appellant, So, fifth respondent is the insured. But fifth respondent admittedly was not in custody or control of the vehicle at the time of the accident. It was in the custody and control of the appellant at that time. So, the fact that the OP was dismissed against the fifth respondent is not, and cannot be, a ground for the sixth respondent (insurer) to avoid its liability to the claimants, because the appellant also is the deemed owner of the bus involved in the accident as per Section 2(30) of the Act, and is a party to the OP. So, the liability of the 'owner' as to the person who has to pay the compensation to the claimants is fixed on the appellant....

18. In case of hire title is not transferred, but in case of sale title is transferred. In Rikhi Ram case, 2003 (2) ALD 71 (SC), the insured sold the vehicle prior to the accident and failed to intimate the transfer to the insurer. The question was whether the insurer is liable to pay the compensation to the third party victims. It was held that the fact that the vehicle, which is covered by the third party risk insurance policy, which is statutory, is transferred to another party does not absolve the insurer of its liability to pay compensation to third party victims. When the insurer is made liable to pay compensation to third party victims in an accident, caused by a vehicle insured with it, in spite of the transferor or transferee not putting it on notice of the transfer, in case of an accident to the vehicle while in custody of the hirer, the insurer would be liable to pay the compensation when the hirer is made a party to the proceedings. Since the appellant, who is the hirer of the bus involved in the accident is a party to the OP, sixth respondent, who is the insurer, is also liable to pay the compensation payable to the claimants. So, we hold that both the appellant and the sixth respondent are liable to pay the compensation payable to the claimants.'

Thus, the Division Bench held that the appellant APSRTC, hirer of the bus involved in the accident and the insurance company are jointly and severally liable to pay the quantum of compensation.

9. Learned Counsel for the appellant also relied upon the decision rendered by my learned Brother, Justice V.V.S. Rao in National Insurance Company Ltd. Warangal v. Lunavathi Hariya, : 2003(2)ALD617 , wherein it was held that when the vehicle

hired by APSRTC met with an accident and the owner of the vehicle failed to establish that the hirer was having any control over the driver who is the employee of the owner, in such case the hirer cannot be made vicariously liable to pay the compensation.

10. In the instant case, Clause 5(ii) of the agreement between the owner and APSRTC stipulates that the owner shall keep his vehicle duly insured to cover third party risk and shall also pay the M.V. taxes and other taxes and levies payable as a consequence of the operation of the above vehicle to all the authorities concerned. Further, Clause 6(iii) of the agreement specifies that the Corporation shall reimburse the owner, the Motor Vehicles Tax and Insurance paid by him in respect of the operation carried but once in 15 days in proportionate rate. These two clauses of the agreement clearly state the insurance coverage of the third party risk and payment of insurance premium by the owner and subsequent reimbursement of the amount by the Corporation to the owner. Clause (7) of the agreement reads that the 'owner shall provide a driver with a valid driving licence and P.S. Badge for the vehicle supplied by him, who shall follow the instructions of the authorised officials of the Corporation.'

11. On the other hand, learned Standing Counsel for the respondent claimants has also drawn my attention to the decision in *Rikhi Ram v. Sukhrania*, 2003 (2) ALD 71 (SC), wherein the Supreme Court while dealing with Sections 94, 95 and 103-A of the Motor Vehicles Act, 1939 held as follows:

'5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject-matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

6. On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the

vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.'

The Supreme Court in *G. Govindan v. New India Assurance Company Ltd.*, : [1999]2SCR476 , has settled the controversy as regards liability of insurer to pay compensation to third party in the absence of any intimation of transfer of the vehicle to the transferee. It was held therein that since insurance against third party is compulsory, and once the insurance company had undertaken liability to third party incurred by the persons specified in the policy, the third party's right to recover any amount is not affected by virtue of the provisions of the Act or by any condition in the policy.

12. Ms. Kalpana Ekbote, learned Standing Counsel for the respondent insurance company has drawn my attention to Section 2(30) of the Motor Vehicles Act and submits that the definition of 'owner' is inclusive and therefore, since the vehicle is hired by APSRTC, the Corporation is vicariously liable to pay the compensation. She has drawn my attention to the judgment of the Apex Court in *Rajasthan State Road Transport Corporation v. Kailash Nath Kothari*, : AIR 1997 SC3444 , wherein it was held as under:

'The definition of owner under Section 2(19) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of 'owner' to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of liability in case of an accident. The liability of the 'owner' is vicarious

for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident..... The general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption. If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, as the case may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner..... In this case the owner of the bus could not ply the bus on the particular route for which he had no permit and he in fact was not plying the bus on that route. The services of the driver were transferred along with the complete 'control' to the SRTC, under whose directions, instructions and command the driver was to ply or not to ply the ill-fated bus on the fateful day. The passengers were being carried by the SRTC on receiving fare from them. The owner therefore was not concerned with the passengers travelling in that bus on the particular route on payment of fare to the SRTC. Driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of the SRTC for operation of the bus. So far as the passengers of the ill-fated bus are concerned, their privity of contract was only with the SRTC to whom they had paid the fare for travelling in the bus. They had no privity of contract with the owner of the bus at all. Had it been a case only of transfer of services of the driver and not of transfer of control of the driver from the owner to the SRTC, the matter may have been somewhat different. The proposition based on the general principle is adequately rebutted in this case not only on the basis of the evidence led by the parties but also on the basis of the conditions of the agreement between the owner and SRTC (see para 15) which go to show that the owner had not merely transferred the services of the driver to the SRTC but actual control and the driver was to act under the instructions, control and command of the conductor and other officers of the

SRTC.... The SRTC cannot escape its liability under Condition No. 15 of the agreement either. Apart from the fact that this clause in the agreement between the owner and the SRTC, to the extent it shifts the liability for the accident from the SRTC to the owner, may be against the public policy, though the Court is not to test the correctness of that proposition of law because on facts, it is held that the SRTC cannot escape its liability to pay compensation. The second part of Condition No. 15 makes it abundantly clear that the SRTC did not completely shift the liability to the owner of the bus because it provided for reimbursement to it in case it has to pay compensation arising out of an accident.'

Thus, the Corporation was also made liable to pay the compensation even though it was not the original owner.

13. She has also drawn my attention to the decision of the Supreme Court in Rikhi Ram case (supra) and submits that the motor vehicle involved in the accident was given on hire to APSRTC which is the 'owner' within the meaning of Section 2(30) of the Act and the original owner has insured the vehicle with the insurance company and as such, the APSRTC has not insured the vehicle and it is not the original owner of the vehicle. Therefore, the insurance company is not liable to pay any compensation and the Corporation alone has to be fastened with the liability.

14. Learned Standing Counsel for the respondent insurance company has relied upon the decision of the Division Bench of this Court in New India Assurance Company Ltd. v. B.C. Suma, : 2002(6)ALT465 (DB), while following the decision of the Apex Court in Kailashnath Kothari (supra) also held that APSRTC - hirer of the vehicle is liable to pay compensation as the Corporation is the owner of the vehicle within the meaning of Section 2(30) of the Act and the insurance company is not liable to pay compensation.

15. Learned Standing Counsel for the insurance company has drawn my attention to Section 23 of the Indian Contract Act and submits that every agreement of which the consideration is unlawful is void. In the instant case, even assuming that there is clause that the owner is responsible, the same is opposed to public policy since the APSRTC was having control over the bus and the bus was in its custody and as such, the appellant is vicariously liable. Further, even if such clause exists

in the agreement, it has to be declared as opposed to the public policy. She further contends that the decision relied upon in Poreddy Sujatha (supra) is not applicable since the agreement therein was not marked. In the instant case, the agreement was marked and the driver was under the control of APSRTC at the time of accident. Further, Rikhi Ram case (supra) has no application to the facts of the case and thus, the Tribunal has wrongly held that the APSRTC alone is responsible following the decisions of the Supreme Court in Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (supra) and this Court in New India Assurance Company Ltd v. B.G. Suma (supra).

16. It is seen from the facts of the case that the appellant Corporation had entered into an agreement with the owner of the bus involved in the accident and the agreement is marked as Ex.B-1. The said bus was insured with the respondent insurance company. It is clear from a plain reading of Clause 6 (iii) of the said agreement that the appellant Corporation shall reimburse the Motor Vehicles Tax and Insurance paid by him in respect of the operation carried but once in 15 days in proportionate rate. Further, Clause 5(ii) also contemplates that the owner shall keep his vehicle duly insured to cover third party risk and shall also pay the Motor vehicle taxes and other taxes and levies payable as a consequence of the operation of the above vehicle to all the authorities concerned. Further, the vehicle was insured and admittedly, the bus was not in the custody of the owner at the time of accident and the bus was under the control of APSRTC. When the owner has paid the insurance premium for the third party risk, the insurer cannot be absolved from its liability. The APSRTC is the hirer of the bus involved in the accident. Thus, the appellant -Corporation and the respondent insurance company are jointly and severally liable to pay the compensation. The contention of standing Counsel for the respondent insurance company that the instant case stands on a different footing cannot be accepted. The Supreme Court in Kailash Nath Kothari (supra) while dealing with identical case wherein the similar agreement was entered into between the Corporation and owner of the vehicle involved in the accident, held that if the original owner is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed by the

employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner.

17. In the case on hand, Clause 6(iii) of the agreement stipulates that the Corporation shall reimburse to the owner of the vehicle the motor vehicle tax and insurance paid him in respect of the operation carried once in 15 days at proportionate rate. It is well settled that the original employer is vicariously liable for the tort committed by the employee in the course of his employment. Since the owner of the accident vehicle has paid the insurance premium to indemnify against the third party risks, the liability of the insurance company cannot be exonerated merely on the ground that the vehicle in question was lent on hire and the vehicle met with an accident when it was in the custody of the hirer. The contention that the insurance certificate was not transferred in the name of APSRTC and as such, the insurance company is not liable to pay compensation, cannot be accepted inasmuch as the premium from time to time was paid by the owner, and the premium was being reimbursed by the Corporation as per the agreement. Thus, the vehicle in question is covered by the comprehensive policy including the third party risks.

18. Further, the definition of the 'owner' under Section 2(30) of the Motor Vehicles Act is wide and comprehensive and the term '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. A plain reading of the said Section reveals that the term 'owner' includes the person to whom the motor vehicle was lent on hire or under an agreement. In the instant case, the appellant APSRTC is a hirer and having taken the vehicle on hire, the accident occurred due to rash and negligent driving of the bus by its driver whose services were lent by the original owner. At the time of accident, the vehicle was under the control and custody of APSRTC through an agreement between the Corporation and the owner of the vehicle. The vehicle in question was insured with the second respondent insurance company and the premium was indirectly paid

by the appellant Corporation to the second respondent insurance company as the premium was being reimbursed by the Corporation to the owner of the vehicle as per Clause 6(iii) under Ex.B-1 agreement. The owner has insured his vehicle, which was lent on hire and as such, the APSRTC becomes the owner in possession under the said agreement. Viewed from any angle, the second respondent insurance company cannot be absolved of its liability to pay the compensation.

19. In these circumstances, I am of the considered view that the Tribunal was not right in holding that the appellant -Corporation alone is liable to pay compensation inasmuch as the vehicle hired by the appellant Corporation was insured with the respondent insurance company and under Ex.B-1 agreement between the owner of the vehicle and the Corporation, the Corporation was reimbursing the premia paid by the owner. Further, the vehicle was in the custody and control of the appellant at the time of accident. In these circumstances, it is held that the appellant Corporation and the respondent insurance company are jointly and severally liable to pay the compensation to the injured persons or the dependents of the deceased on account of the accident. Thus, the award of the Tribunal is modified to the extent of fastening the liability on the respondent-insurance company also. Thus, the appellant-APSRTC and respondent-insurance company are jointly and severally liable to pay the compensation awarded by the Tribunal.

20. The appeals are allowed to the extent indicated above. No order as to costs.