APHC010264502012

**IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI**
**(Special Original Jurisdiction)**

**[3365]**

FRIDAY ,THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

**PRESENT**

**THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR**

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 386/2012**

**Between:**

Pulavarthi Daniyelu, W.g.district **...APPELLANT**

**AND**

Kollam Sudhakara Babu Prakasam District And Anr and Others **...RESPONDENT(S)**

**Counsel for the Appellant:**

1. B V KRISHNA REDDY

**Counsel for the Respondent(S):**

1. G.ARUN SHOWRI(CENTRAL GOVT. COUSEL)
2.

**The Court made the following:**

**THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

**MACMA No. 386 of 2012**

**JUDGMENT:**

1. This appeal under section 173 of the Motor Vehicles Act, 1988 is filed by the appellant/claimant impugning the order dated 22.07.2009 of the learned Chairman, Motor Accident Claims Tribunal – Cum –Additional District Judge, Eluru in OP.No.80 of 2007.

2. Heard arguments of Sri BV Krishna Reddy, the learned counsel for appellant and Sri G.Arun Showri, the learned Central Government counsel for respondent No.2.

3. The short question involved in this appeal is whether in the facts and circumstances of the case, the learned claims tribunal erred in not fastening the liability on the owner of the offending vehicle.

4. The question arose in the following context

A Mini Van bearing registration number AP 16 U 5376 is a van used for MMS services by the postal department. It was driven by its employee who was holding valid driving licence. The vehicle, since belonged to the Government, it seems the option of not obtaining insurance policy as allowed by section 146(2) of Motor Vehicles Act, 1988 was exercised and thus there was no

insurance policy covering third-party risks. In such events, the liability, if any, is assumed by the Government.

5. On 28.12.2002, this vehicle was coming from Addanki side to Ongole and enroute the driver of it permitted Sri P Danieyelu to board the vehicle at 9:30 AM on 28.12.2002. At about 10:30 AM when it reached near coastal center, the driver of it failed to exercise reasonable care and caution and the vehicle went into a pit and turned turtle and consequently, P Danieyelu suffered serious injuries. The injured was said to be a pastor earning monthly salary. He filed MVOP.80 of 2007 as against the driver and the senior superintendent of Post Office, Prakasam district, praying for compensation of Rs.1,50,000/- in terms of section 166 of the Motor Vehicle Act,1988. The driver as well as owner presented their counters. The driver contended that the claimant never travelled in the offending vehicle and he did not sustain any injuries in the accident. The owner contended that the driver was not authorized to carry passengers unauthorizedly and prayed for dismissal of the claim. The following issues were settled by the tribunal.

1. Whether the petitioner-Injured sustained injuries in a motor vehicle accident on 28-12-2002 due to rash and negligent

driving of the Mini Van bearing No.AP 16 U 5376, driven by its driver-1st Respondent?

2. Whether the petitioner is entitled to claim compensation? If so, to what amount and from which of the respondents?
3. To what relief?

There was evidence of PW.1 and 2 and Ex. A1 to A6 and the evidence of RW.1 was available for consideration. The subject matter accident was registered as Cr.No.69 of 2002 by Maddipadu Police Station evidenced by Ex.A1/FIR and the driver of the offending vehicle was charge sheeted for prosecution as evidence by Ex.A5. Considering the evidence of PWs.1 and 2 and the above documents, learned claims tribunal concluded that claimant was in the offending vehicle and the offending vehicle suffered the accident because of rash or negligent driving of the offending vehicle by its driver. It assessed compensation under various heads and granted them as mentioned below.

| | | Amount in Rs. |
|---|---|---|
| 1. | Four simple injuries Rs.3,000 X 3 | 9,000/- |
| 2. | One Grievous Injury Rs.10,000 X 3 | 30,000/- |
| 3. | Towards pain and suffering | 5,000/- |

| | | |
|---|---|---|
| 4. | Towards medical expenses | 5,000/- |
| 5. | Towards loss of future earnings | 2,30,400/- |
| | Total | 2,79,400/- |

6. Thus, more than what was claimed was considered as just compensation by the tribunal. It stated that the compensation required to be paid only by the driver of the vehicle, not by the owner. It passed the award in the following terms.

> *In the result, this Petition is allowed granting compensation of Rs.2,79,400/- with costs and interest @ 7.5% per annum from the date of petition till the date of realization. The respondent No.1 is directed to deposit the above said amount within two months from the date of this Award. The petitioner is directed to pay the Court fee payable on the enhanced amount compensation amount of Rs.1,29,400/-, failing which the amount of compensation awarded shall automatically be limited to one claimed the petition. On such deposit, the petitioner is permitted to withdraw the amount of Rs.25,000/-. The balance amount shall be invested in fixed deposit in any Nationalized Bank for a period of two years, and thereafter shall be renewed likewise till further Orders. The claim against the 2nd respondent is dismissed, but without costs. The rest of the claim is dismissed but without costs*

7. Aggrieved by the same, claimant preferred this appeal. Sri BV Krishna Reddy, the learned counsel appearing for claimant with all vehemence contended that even if the appellant/ injured is an unauthorized passenger law does not permit the owner

being exonerated since the owner/ master is liable for the acts of its driver/ agent and such erroneous award requires interference.

8. In this appeal R1 is the driver. Despite service of notice and paper publication, he did not choose to appear and contest. On behalf of R2, senior superintendent of post office, Prakasam District, learned Central Government Counsel contended that tribunal rightly absolved the owner from liability and no interference is called for in this appeal and cited ***Maimuna Begum V. Taju[1].*** In the cited ruling, the facts were that the driver of a truck who was meant to carry goods allowed certain persons to travel and for that purpose, he had taken money from them and the vehicle met with an accident resulting in injuries to the said unauthorized passengers. It was in such circumstances, the High Court of Bombay (Nagpur Bench) took the view that the act of driver taking passengers in a goods vehicle was a criminal act. The master/ owner cannot be fastened with liability for consequences arising out of such wrongful act of agent/driver. Applying that reasoning, it was held that the owner was not liable to pay compensation to the injured.

[1] MANU/MH/0372/1987

9. The way the accident took place and the injuries suffered by the appellant/ claimant and the compensation granted to the appellant/ claimant by the tribunal are not in dispute in this appeal.

10. The evidence on record amply established that the claimant was an unauthorized passenger in a Government vehicle. It Is also not in dispute that the driver of the offending vehicle was not supposed to carry any such unauthorized passenger, but he carried him. That the offending vehicle belonged to R2 herein is undisputed. The doctrine of *respondeat superior* (let the master answer) holds the owner liable for the actions of the driver. This doctrine is based on the idea that the owner has control over the driver and is responsible for ensuring that the driver acts responsibly. In fact, holding the owner liable for accidents caused by the driver serves public policy purposes. The driver is considered as agent of the owner and the owner is responsible for the drivers actions. Therefore, owner is vicariously liable for the actions of the driver. In ***Pushpabai Purshottam Udeshi V. Ranjit Ginning and Pressing Company Private Limited[2],*** the facts that were available before their Lordships of the Hon'ble

[2] 1977 (2) SCC 745

Supreme Court of India were that the owner of the vehicle employed a driver on the car and during its use the driver gave lift to the passenger and he did it without the knowledge of the owner. Out of rash or negligent driving of the driver, the accident took place and this unauthorized passenger suffered injuries and died. An argument was advanced before their Lordships that the driver without obtaining permission from the owner carried the passengers and therefore the liability could not be fastened to the owner. Rejecting that argument, their Lordships held that owner was liable to pay compensation. Their Lordships further stated that the recent trend in law is to make the master liable for acts of his servant which may not fall within the expression "in the course of his employment" as formerly understood. The extended principle is to the effect that the owner is not only liable for the negligence of the driver if the driver is his servant acting in the course of his employment but also when the driver is driving the car on the owner's business or for the owner's purposes. In cases of unauthorized passengers, the indemnifier/ insurance company may not be liable as that would amount to breach of conditions of insurance policy. However, the liability of the owner in such cases is still available as held by the Hon'ble Supreme Court of India in

***National India Insurance Company Limited V. Baljit Kaur***[3]. In the case at hand, whatever the breach that may have been there between the owner and the driver, the fact remained that the driver was driving the offending vehicle at the material point of time for the purpose of owner. No owner ever granted any permission to any driver to drive the vehicle negligently or rashly and cause an accident. Therefore, no accident is ever authorized by any owner. Could it be said that when a driver acted negligently in discharging his function, it amounted breach of contract between the driver and the owner thereby absolving the owner from any liability especially when the accident cause death or physical impairment or injuries to the third party. The Motor Vehicles Act, 1988 fastens liability on the owner though owner never drove the vehicle by himself. The ruling cited by the learned counsel for respondent No.2 has no application to the case at hand in view of the discussion made above.

11. Earlier contentions used to be raised by the Government on the premise of sovereign immunity. All that is now no more

[3] 2004 (2) SCC 1

available as held by the Hon'ble Supreme Court of India in ***N.Nagendra Rao & Co. V. State of AP***[4].

12. In the light of the above principles, it is clear that the R2/ owner of the offending vehicle is to shoulder the responsibility. For the mistake committed by its employee, it is entitled to take action against him. However, when such mischief on part of its employee during the course of his duties when resulted in accident and injuries to a third party the owner shall shoulder the responsibility. The legality of the award was not challenged before this court by the respondents herein. In such circumstances, this court has to state that the responsibility that was fastened on R1 by the tribunal should also be extended to fastening liability on R2 as it has been the owner of the offending vehicle. To that extent, the impugned award requires modification. Point is answered accordingly.

13. In the result, this appeal is allowed to the extent of fastening liability on respondent No.2 also. To that extent, the impugned award dated 22.07.2009 of learned Motor Accidents Claims Tribunal – cum – Additional District Judge – cum Family Court, Eluru, West Godavari in Original Petition No.80 of 2007

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[4] (1994) 6 SCC 205

stands modified. Therefore, respondent No.2 herein shall deposit the awarded amounts along with interest and costs occasioned before the claims tribunal within two months before the claims tribunal if not deposited already. Rest of the conditions in the impugned award shall stand intact. Parties to this appeal shall bear their own costs.

As a sequel, miscellaneous applications, pending, if any, shall stand closed.

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**Dr. V.R.K.KRUPA SAGAR, J**

**Date: 21.03.2025**

*Dvs*

**THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

**MACMA No. 386 of 2012**

**Date:21.03.2025**

*Dvs*