

THE HONOURABLE SRI JUSTICE GHULAM MOHAMMED

**C.M.A.Nos. 915, 3007,3108 of 2004, 229, 239 of 2005, 609, 1583
of 2006 and 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635 and
1636 of 2010**

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COMMON JUDGMENT:

Since all these appeals arise out of the same accident, they are being taken up together for disposal.

2. The facts, in brief, are that on 09.12.2001 at about 3.15 PM, when an auto bearing No.AP.09V.2096 with passengers coming from Kodumur to Puttapasam village, and reached near Vemugodu village, one APSRTC bus bearing No.AP 11Z 593, came in opposite direction, driven by its driver in a rash and negligent manner and hit the said auto resulting in death of several passengers and injuries to the other passengers. The Police, Gonegandla, registered a case in Crime No.93 of 2001 against the driver of the bus for the offences under Sections 337, 338 and 304-A IPC. The injured and the legal heirs of the deceased filed O.Ps on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kurnool (for short 'the Tribunal') claiming compensation against respondents 1 to 3, who are APSRTC and the owner and insurer of the auto respectively.

3. Respondent No.2 remained *ex parte*. Respondent No.1-APSRTC filed counter denying the manner of accident and stating that on the date of accident, there was heavy smoke on the road since the agriculturists set fire to the waste agricultural produce and that the driver of the auto came on wrong side in a rash and

negligent manner and dashed the bus and as such, the first respondent is not liable to pay any compensation.

4. Respondent No.3-insurer of the auto filed counter denying the manner of accident and stating that the accident occurred due to rash and negligent driving of the driver of the bus and as such, the first respondent alone is liable to pay compensation.

5. In all the O.Ps., on the basis of the pleadings, the Tribunal framed necessary issues for trial. During trial, several witnesses were examined and documents were marked on behalf of the claimants and also the respondents.

6. On consideration of oral and documentary evidence, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of drivers of the bus and the auto contributing negligence at 80% and 20% respectively, and awarded compensation to the claimants and out of the said compensation, APSRTC is liable to pay 80% and the owner and insurer of the auto together are liable to pay at 20%. Aggrieved by the same, the present appeals are filed by the APSRTC and the Insurance Company.

7. Learned counsel appearing for appellant-insurer of the auto vehemently contended that the Tribunal erred in holding that there was contributory negligence on the part of both the drivers since the accident occurred due to negligent driving of the driver of the bus only. He further contended that as the insurance coverage to the auto is limited to six passengers as per Ex.B1-policy, the liability should be fastened on the appellant for six claims, and for

remaining cases the liability should be fastened on APSRTC. He further contended that the Tribunal ought to have appreciated the evidence of R.W.2, who clearly stated that the owner of the auto had violated the terms and conditions of the policy by carrying 14 passengers at the time of the accident.

8. It is not in dispute that the driver of the auto died in the accident, in which some passengers died and some were injured. It is also not in dispute as regards the quantum of compensation awarded by the Tribunal, but the dispute is between APSRTC and insurance company with regard to fastening of liability on them. As per the terms of Ex.B1 policy, the liability of insurer of the auto is to be restricted to six claims. Therefore, the liability of the insurer of the auto be restricted to six cases i.e., C.M.A.Nos.1629, 1630, 1631, 1632, 1633 and 1635 of 2010 and the APSRTC and the owner of the auto are liable to pay the compensation to the claimants in rest of the cases namely, CMA Nos.915, 3007, 3108 of 2004, 1634, 1628, 1636 of 2010, 239 and 229 of 2005, and 609 and 1583 of 2006, at 80% and 20% respectively.

9. With the above modification, C.M.A.Nos.1629, 1630, 1631, 1632, 1633 and 1635 of 2010 are allowed in part and CMA Nos.915, 3007, 3108 of 2004, 1634, 1628, 1636 of 2010, 239 and 229 of 2005, and 609 and 1583 of 2006 are dismissed. No costs.

GHULAM MOHAMMED, J

Date:24.06.2010

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