

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

**MACMA MP No.5251 of 2014 in MA CMA No. 2560 of 2015 &
M.A.C.M.A. No. 2560 of 2015**

COMMON ORDER :

Heard and the delay is condoned and while directing the Registry to number the appeal, if otherwise in order, at request of both sides the appeal is taken up for final hearing.

2) Heard the counsel for APS RTC (appellant) and the counsel for claimants-respondent Nos.1 and 2 and the counsel for the 4th respondent-Insurance Company for 3rd respondent dismissed for default as can be seen from the award and the submission already recorded by the docket dated 09.11.2015 of not a necessary party to the appeal as 3rd respondent and even impleaded and dismissed for not taking fresh notice not a bar vide **Meka Chakra Rao v. Yelubandi Baburao**. Hence taken as heard the claimants and heard the learned counsel for R.T.C and the insurance company and perused the material on record.

3) The claim petition was filed by the two claimants, parents of the deceased girl aged 3 years. The only contention remained for decision in the appeal is that the Tribunal gravely erred in fixing the liability only on the APS RTC by exonerating the owner and insurer of the vehicle saying the bus is under hire with APS RTC. In fact, the law is fairly settled by the expression **Uttar Pradesh State Road Transport Corporation V. Kulsum** in saying once the vehicle is insured by the owner, even if it is in hire with APS RTC, it is the insurer that can be made liable to indemnify pursuant to the policy and cannot exonerate from liability and it is not within the scope of Section 157 of the Motor Vehicles Act, even to escape from any liability or to pray liability of pay and recover. The full bench of this Court in **APSRTC, Hyderabad V. B.kanakaratnabai** resolving the conflicting expression of this Court earlier by relying in **kulsum** supra reiterated the proposition saying the insurer is liable to indemnify the

owner and cannot be exonerated the liability.

4) Having regard to the above, the Tribunal gravely erred in exonerating the owner and insurer to indemnify and fixing the liability only on APS RTC. Thus, the appeal is to be allowed by fixing the joint liability against APS RTC and owner of the vehicle to be indemnified by the insurer. It is needless to say whatever the amount the APS RTC paid is entitled to claim reimbursed from the insurer and the remaining amount as per the award with interest is liable to be paid by the insurer.

5) With the above observations, the appeal is allowed. There shall be no order as to costs. Consequently the pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

17.11.2015

ksh