

2021 Scej 986

SUPREME COURT OF INDIA

Before: Justice S.Abdul Nazeer and Justice Krishna Murari.

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION - Appellant,

Versus

NATIONAL INSURANCE CO. LTD. & ors. - Respondents.

Civil Appeal Nos. 18490-18491 of 2017

Motor Vehicles Act, 1988 (59 of 1988), Section 166 - Corporation had hired a bus - Effective control and command of the bus is with the Corporation, the Corporation becomes the owner of the vehicle for the specified period - When the actual possession of the vehicle is with the Corporation, the vehicle, the driver and the conductor were under the direct control and supervision of the Corporation - Therefore, through the definition of "vicarious liability" it can be inferred that the person supervising the driver is liable to pay the compensation to the victim - During such time, however, it will be deemed that that vehicle was transferred along with the insurance policy, even if it were insured at the instance of the original owner - Insurance Company liable. U.P. State Road Transport Corporation, Kulsum, (2011)18 SCC 142, followed. [#2021 Scej 986](#)

Editor : see also U.P. State Road Transport Corporation v. Rajendri Devi . (2020-4)200 PLR 622 (SC)

Cases referred to:

1. (2011) 8 SCC 142, *Uttar Pradesh State Road Transport Corporation v. Kulsum*

ORDER

(14th July ,2021) - These appeals have been filed by the Uttar Pradesh State Road Transport Corporation (for short, "Corporation") challenging the orders dated 18.07.2017 and 03.12.2009 whereby the appeal filed by the first respondent-

National Insurance Co. Ltd. (for short, "Insurance Company") has been disposed of in terms of judgment and order dated 18.09.2009 passed by the High Court of judicature at Allahabad, Lucknow Bench, in F.A.F.O. No. 199 of 2001 and batch of matters.

2. The appellant-Corporation had hired a bus bearing No.UP32T/1459 from respondent no.9 under a written contract dated 20.05.1998. The said bus was duly insured by respondent no.9 with the Insurance Company vide Cover Note No.015425 dated 25.02.1998, for the period 28.02.1998 upto 27.02.1999. On 25.08.1998 a fatal motor vehicle accident took place involving the said bus which resulted in the death of Rajitram @ Raju. A claim petition bearing MACT NO.161/70/98 was filed by the legal heirs of the deceased before the Motor Accident Claim Tribunal, Bahraich, Uttar Pradesh. The Corporation filed its written statement bringing on record the contract entered into between the Corporation and the bus owner as well as the factum of insurance of the bus with the Insurance Company. The Insurance Company filed its response admitting the existence of the Insurance Policy with respect to the said bus during the relevant period.

3. The M.A.C.T., on appreciation of the materials on record, by an Award dated 30.11.2006 held that the Insurance Company is liable to pay compensation of Rs.1,82,000/- with interest at the rate of 6% per annum to the claimants.

4. The Insurance Company preferred an appeal before the High Court of Judicature at Allahabad, Lucknow Bench, in F.A.F.O. No.219 of 2007 mainly on the ground that it is not liable to pay the compensation as awarded by the M.A.C.T. as the Corporation was operating the said bus when the accident took place. Thus, the Corporation was liable to satisfy the Award.

5. It is relevant to note here that the High Court of Judicature at Allahabad, Lucknow Bench, has passed a judgment dated

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18.09.2009 in F.A.F.O. NO.199 of 2001 and other connected matters holding that the Insurance Companies are not liable to pay compensation to the third parties in the event the buses were operated under the control of the Corporation. Subsequently, the appeal filed by the Corporation was allowed by the High Court.

6. We have heard learned counsel for the parties and perused the materials placed on record.

7. The question that falls for our consideration in the instant appeal is: if an insured vehicle is plying under an agreement with the Corporation on the route as per permit granted in favour of the Corporation and in case of any accident during that period, whether the Insurance Company would be liable to pay compensation or would it be the responsibility of the Corporation or the owner?

8. This question has been answered by this Court in *Uttar Pradesh State Road Transport Corporation v. Kulsum and Others*,¹(2011) 8 SCC 142, which is an identical case where the Supreme Court examined the agreement entered into between the Corporation and the owner of the vehicle. The Court has come to the conclusion that when the effective control and command of the bus is with the Corporation, the Corporation becomes the owner of the vehicle for the specified period. It was further held that when the actual possession of the vehicle is with the Corporation, the vehicle, the driver and the conductor were under the direct control and supervision of the Corporation. Therefore, through the definition of “vicarious liability” it can be inferred that the person supervising the driver is liable to pay the compensation to the victim. During such time, however, it will be deemed that that vehicle was transferred along with the insurance policy, even if it were insured at the instance of the original owner. Thus, the Insurance Company would not be able to escape its liability to pay the amount of compensation.

9. Having regard to the above, we are of the view that the High Court was not justified in fastening the liability upon the appellant-Corporation. Thus, the appeals succeed and are accordingly allowed. The impugned judgments of the High Court are hereby set aside and the judgment of the Trial Court is restored.

10. At this stage, learned counsel for the appellant- Corporation submits that the appellant-Corporation has deposited a sum of Rs.4,10,128/- before the M.A.C.T., Bahraich, Uttar Pradesh before filing of these appeals.

11. In view of above, we permit the appellant- Corporation to withdraw the said amount with accrued interest thereon if any, and direct the first respondent-National Insurance Co. Ltd. to deposit a sum of Rs.1,82,000/- along with interest on the above compensation amount at the rate of 6% per annum from the date of filing of the claim petition till the date of deposit. The deposit, as above, shall be made by the Insurance Company before the M.A.C.T., Bahraich, U.P., within a period of six weeks from today. Upon deposit, the claimants are permitted to withdraw the said amount.

12. We direct the parties to bear their respective costs.

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