

**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

**MACMANo.1914 of 2005**

**Date: 02-12-2015**

Between:

B. Savitha

.... Appellant

AND

New India Assurance Co. Limited,

Represented by its Divisional Manager

Nizamabad and 5 others

.... Respondents

**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

**MACMANo.1914 of 2005**

**ORDER:**

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This appeal is preferred by the 5<sup>th</sup> respondent in O.P.No.857 of 1996 on the file of Motor Accident Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizambad.

The respondents 5 and 6 herein, who are claimants, filed the O.P. claiming compensation of Rs.2,00,000/- for the death of one Balaiah in a motor accident that occurred on 27-07-1992. The said Balaiah was stated to be an agriculturist having lands in Kuprial village and also was running a hotel apart from owning an auto rickshaw. The 1<sup>st</sup> petitioner was the wife and the 2<sup>nd</sup> petitioner is the daughter. The respondents 3 and 4 are the parents of the deceased. The 5<sup>th</sup>

respondent was claimed to be the second wife. The Tribunal framed the following issues for consideration:

1. Whether the accident was occurred due to rash and negligent driving of tractor bearing No.AP-25-T-3950 by its driver?
2. Whether the 1<sup>st</sup> petitioner is legally wedded wife of the deceased Balaiah and the 2<sup>nd</sup> respondent is their daughter and also entitled to receive any compensation?
3. Whether the respondents 3 and 4 are entitled to receive any compensation for the death of Balaiah in the accident?
4. Whether the 5<sup>th</sup> respondent is legally wedded wife of deceased Balaiah and entitled to receive any compensation?
5. To what relief?

With regard to issue No.4, the Tribunal held as follows:

“.....The 5<sup>th</sup> respondent claim is she is only legally wedded wife of late Balaiah and petitioners have nothing to do with him. As already held by me both oral and documentary evidence placed on record by the petitioners and respondents 3 and 4 has clinchingly proved that 1<sup>st</sup> petitioner is legally wedded wife of late Balaiah and the 2<sup>nd</sup> petitioner is their daughter, which fact is admitted by Balaiah himself in counter filed by him in the maintenance petition M.C.14/94. The 5<sup>th</sup> respondent to prove that she is legally wedded wife and examined RW.2 who claims to a witness to their marriage but has not placed acceptable documentary evidence on record. She has filed wedding card in Ex.B.6, the photographs in Exs.B.3 to B.5. It is pertinent to say that respondents 3 and 4 are the parents of the deceased Balaiah and competent persons to speak about the marriage of Balaiah and they have categorically stated that the 5<sup>th</sup> respondent has nothing to do with Balaiah. If really, there was a marriage between deceased Balaiah and the 5<sup>th</sup> respondent, and photographs were taken for the said marriage certainly the respondents 3 and 4, the parents of the deceased, would have been figured in the photographs filed by her. The parents of the 5<sup>th</sup> respondent are competent persons to speak about her marriage. For the reasons best known to her, she has not chosen to examine either of them. Also she has not filed a document like ration card or a voters list to show that herself and deceased Balaiah lived under one roof as husband and wife so as to believe her case. Her evidence in cross-examination is their marriage took place in Jakkaaram temple by exchange of garlands and no other ceremony was performed. Mere exchange of garlands in a temple does not amount

performance of any legal marriage. She further stated in the same cross-examination that her marriage was recorded in the temple by the said temple authorities. Had it been so she should have taken steps to summon the said record and examine the temple authorities. She also has not examined any of the relatives of late Balaiah to prove the marriage between them. Even assuming for a moment, without admitting that there was a marriage in the form of exchange of garlands between the deceased and herself in the Jakkaram temple, the said marriage cannot be held as legal because the marriage between the 1<sup>st</sup> petitioner and deceased has not been dissolved. When the marriage between the 1<sup>st</sup> petitioner and deceased subsist any form of subsequent marriage between the deceased and the 5<sup>th</sup> respondent is not valid. So in any view of the matter, the 5<sup>th</sup> respondent cannot be claimed that she is also legally wedded wife of the deceased and entitled to receive the compensation. Absolutely, there is no acceptable evidence on record to believe that the deceased Balaiah lived with the 5<sup>th</sup> respondent at any point of time and contributed any amount for her maintenance. Hence, for these reasons issue is answered that 5<sup>th</sup> respondent is not legally wedded wife of deceased Balaiah and she is not entitled to receive any compensation.....”

Thereafter, it awarded an amount of Rs.2,63,000/- to the petitioners 1 and 2 and respondents 3 and 4 being the legal representatives of the deceased by its award dated 04-01-2005.

In view of the finding of fact recorded by the Tribunal as above, this Court is not inclined to entertain the present appeal and the same is liable to be dismissed.

Accordingly, the appeal is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

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**RAMALINGESWARA RAO, J**

Date: 03-12-2015

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