HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1495 OF 2005

JUDGMENT:

The Oriental Insurance Company Limited preferred the instant Civil Miscellaneous Appeal against the order and decree, dated 27.02.2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Warangal, in M.V.O.P. No.455 of 2001, whereby and whereunder, the Tribunal after determining the compensation at Rs.4,14,000/-, taking contribution of the deceased for occurrence of the accident at 50%, reduced the amount to half of the said amount, and awarded Rs.2,07,000/- against it and apportioned the compensation amongst the petitioners.

2 . The appellant herein, which is insurer of the lorry bearing No.AP-11-T-3679 that involved in the accident, is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are husband and son, respectively, of Mudavath Salamma, who died in the accident (hereinafter referred to as 'deceased'), are respondent Nos.1 and 2, respectively, and respondent No.3, who is owner of the lorry, is respondent No.1.

3 . For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that while petitioner No.1 along with his wife Mudavath Salamma, and some others were collecting *inams/ mamools* from the persons proceeding on the road on the eve of Holi

festival, lorry bearing No.AP-11-T-3679, which came from Mahabubabad and proceeding to Ingurthy village, was stopped by them demanding *inam* (amount), for which driver of the lorry refused to pay the amount and drove the lorry negligently, due to which, Salamma fell down and rear wheels of the lorry ran over her resulting in her instantaneous death. The petitioners, therefore, sought a sum of Rs.3,00,000/- towards compensation.

5. Respondent No.1, who is owner of the lorry that involved in the accident, remained *ex parte* in the O.P. before the Tribunal.

6 . Respondent No.2, insurer of the lorry, filed counter opposing the claim strongly pleading that only due to rash and negligent act of the deceased, the accident had taken place and the insurance company, therefore, cannot be mulcted with any liability to pay the compensation. It has also reserved its right to seek protection under Sections 147, 149 and 170 of the Motor Vehicles Act, 1988 and Section 64(5)(b) of the Insurance Act.

7 . The Tribunal has framed three issues for determining negligence as well as compensation to which the petitioners are entitled.

8. During enquiry, petitioner No.1 besides examining himself as PW.1, examined PW.2 and marked Exs.A-1 to A-11. On behalf of the insurer, no oral or documentary evidence was adduced.

9 . On appraisal of evidence let in by the petitioners, the Tribunal, somehow, arrived at the finding that the deceased did contribute to the accident to the extent of 50% and, thus, answered issue No.1. On issue No.2, the Tribunal fixed monthly

earnings of the deceased at Rs.3,000/-, deducted 1/3rd therefrom towards her personal expenses and arrived at contribution of the deceased to her family at Rs.24,000/- per annum and by applying multiplier ‘17’, taking the age of the deceased as thirty (30) years as per Ex.A-7 post-mortem report, arrived at Rs.4,08,000/- towards loss of dependency. Besides the same, the Tribunal has granted a sum of Rs.2,000/- towards funeral expenses, Rs.4,000/- towards loss of estate and, thus, arrived at Rs.4,14,000/- towards total compensation and restricting the liability of the insurer to 50%, granted Rs.2,07,000/- to the petitioners towards compensation with interest at 9% per annum from the date of petition till realisation.

10. It is the aforesaid order and decree which is under challenge in the instant appeal contending that the Tribunal was wrong in fixing monthly earnings of the deceased at Rs.3,000/- just taking into consideration that she was assisting petitioner No.1 in agricultural operations, more particularly, when there is no evidence to prove her income, and, therefore, sought to set aside the award and decree.

11. Heard Smt. I. Maamu Vani, learned counsel for the insurer, and Sri B. Ravindranath Reddy, learned counsel for the petitioners, and perused the material on record.

12. Learned counsel for the insurer filed a Memo in USR No.546 of 2012 intimating that respondent No.3 is not a necessary party to the instant appeal.

13. At the outset, it has to be held that the insurance company cannot seek exoneration and attribute total negligence to the deceased, more particularly, when none of the witnesses were

examined on its behalf, still, more particularly, the driver of the lorry, who is the best person, to speak about the manner in which the accident occurred. Therefore, the ground of exoneration sought by the insurer is without any material.

14. Concerning quantum of compensation and fixing monthly income of the deceased at Rs.3,000/- by the Tribunal,
it has to be held that even in similar situations where a
house-wife, who is a non-earning member too, died in an accident, for domestic help or other avocation, the minimum sum of Rs.3,000/- per month has to be taken as their earnings in view of the decision of the Hon'ble Supreme Court in **Lata Wadhwa v. State of Bihar.**

15. Thus, viewed from any angle, there is absolutely no merit in the instant appeal.

16. Therefore, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

17. As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand closed.

A. SHANKAR NARAYANA, J

November 24, 2015.

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