**HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**

**CIVIL MISCELLANEOUS APPEAL No.2305 OF 2004**

**JUDGMENT:**

Respondent No.3 - M/s. Oriental Insurance Company Limited in O.P. No.595 of 2000 is the present appellant. Aggrieved over the order, dated 26.03.2004, passed by the Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Karimnagar (for short 'Tribunal'), the present appeal is preferred by Insurer under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act') for awarding a compensation of Rs.3,50,000/- with interest at 9% per annum.

2. Respondent Nos.7, 8 and the appellant herein, who are driver, owner and insurer of Lorry bearing registration No.AP 09T 3088, respectively, are respondent Nos.1 to 3 in the aforesaid O.P., while respondent Nos.1 to 6 are petitioners.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid OP before the Tribunal.

4. The Tribunal framed the following three issues basing on the pleadings of the petitioners and respondent No.3, since respondent Nos.1 and 2 remained *ex parte*.

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1. Whether the accident took place due to the rash and negligent driving of the vehicle i.e., Lorry bearing Registration Number AP-09-T-3088 by its driver?

2. Whether the petitioners are entitled to compensation, and if so, to what amount and from whom?

3. To what relief? ”

5. During inquiry, on behalf of the petitioners, as many as four witnesses were examined as PWs.1 to 4, and Exs.A-1 to A-6 were marked, besides marking Ex.X-1. On behalf of respondent No.2, two witnesses were examined as RW.1 and RW.2 and marked Exs.B-1 to B-6.

6. The Tribunal, on issue No.1, held that due to rash and negligent driving of the driver of the lorry, the accident occurred. On issue No.2, basing on the salary certificate, taken the salary as Rs.3,000/- per month after deducting the amounts mentioned under other heads in Ex.A-6, arrived at Rs.36,000/- as annual income, deducted 1/3rd thereof towards personal living expenses and arrived at Rs.24,000/- towards contribution to the family, applied multiplier ‘13’ and worked out the loss of dependency at Rs.3,12,000/-. The Tribunal has granted Rs.15,000/- towards loss of estate, Rs.5,000/- towards loss of consortium and Rs.5,000/- each towards loss of love and affection to petitioner Nos.4 and 5 and even petitioner Nos.2 and 3 were granted Rs.4,000/- each. Thus, the award was passed for Rs.3,50,000/- and apportioned the amounts amongst the petitioners, who are numbering six.

7. Heard Mrs. S.A.V. Ratnam, learned standing counsel for the appellant - Insurer, and Sri K. Jagadiswar Reddy, learned counsel for respondent Nos.1 to 5 - petitioners. In fact, against respondent Nos.6

to 8, the appeal stood dismissed for default on 03.02.2011. Among respondent Nos.6 to 8, respondent No.6 is one of the petitioners, respondent No.7 is the driver of the vehicle and respondent No.8 is the owner of the vehicle.

8. When the insurer seeks to exonerate from its liability, it cannot allow the appeal to be dismissed for default against owner of the vehicle. Further, the insurer even allowed the appeal to go for dismissal so far as respondent No.6, who is no other than one of the petitioners. In such an event, even without probing into merits and whether the Tribunal went wrong in awarding compensation, the present appeal itself is liable to be dismissed on this short ground.

9. However, when examined the evidence on record by way of re-appreciation, certainly, there is nothing in the evidence of RWs.1 and 2 to show that some other vehicle was involved and not the vehicle which is now shown by the petitioners. On the other hand, the documentary evidence through Exs.A-1 to A-5 are clinching enough to show the involvement of the lorry bearing registration No.AP 09T 3088. When the investigation culminated into charge sheet and the driver of the vehicle which is now shown as involved in the accident, certainly, it cannot be said that the vehicle is either planted for a wrong claim is made on the mere ground that description of the vehicle or number of the vehicle was not mentioned in the First Information Report. Precisely, the Tribunal observing so, did not agree with the insurer. Therefore, the finding recorded by the

Tribunal on that aspect of the case on issue No.1, does not suffer from any infirmity warranting interference.

10. So far as compensation amount granted by the Tribunal is concerned, in fact, the same cannot also be viewed as excessive or exorbitant for the reason that the Tribunal has taken only Rs.3,000/- per month as the earnings as against the entries in Ex.A-6, salary certificate, showing that a sum of Rs.315.96ps was being drawn, as per Ex.X-1 even. Therefore, viewed from any angle and also viewed in the angle that no amount is granted towards future prospects, certainly, the amount of Rs.3,50,000/- granted by the Tribunal cannot be construed as exorbitant. There is no merit in the present appeal.

11. The present appeal is, therefore, dismissed, confirming the order and decree passed by the Tribunal in all respects. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

**A. SHANKAR NARAYANA, J**

**September 12, 2017**
Mgr