

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3812 OF 2015
IN
FIRST APPEAL NO.2462 OF 2005

Dnyaneshwar Haribhau Rakshe ... Applicant
In the matter between
New India Assurance Company Limited ... Appellant
vs.
Dnyaneshwar Haribhau Rakshe and Others ... Respondents

Mr. Sagar Batavia i/b. Mr. R.N. Sanghavi, for the Applicant.
Mr. S.S. Vidyarthi i/b. Mr. S.M. Vidyarthi, for the Appellant.
Mr. Rushil Mathur i/b. Mulla and Mulla and CBC, for
Respondent No. 5.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **21st JANUARY, 2016**

P.C.:

. This application is moved for restoration of the Civil Application No. 12374 of 2015 in First Appeal No. 2462 of 2005 and also it is prayed that the delay be condoned.

2. At the time of hearing of this application by going through the record of First Appeal No. 2462 of 2005, it is found that this Appeal can be decided at this stage, as a short point is involved in it.

3. In view of this, Civil Application No. 12374 of 2015 is hereby restored to its original file.

4. Accordingly, Civil Application No. 3812 of 2015 stands disposed of.

5. This Appeal is filed by the Insurance Company challenging the judgment and award dated 27th July, 2015 passed by the Additional Member, M.A.C.T., Pune in M.A.C.P. No. 924 of 1999 thereby passing an award of Rs. 3,44,000/- with interest @ 8% p.a. The parents and two sisters of the deceased have filed the Petition under Section 166 of the Motor Vehicle Act, 1988. The accident has taken place on 17th December, 1998 when deceased Chandrashekhar was riding M-80 vehicle bearing No. MH-12/SA-4504. The offending Tata vehicle bearing No. MH-12-0728 gave dash in rash and negligent manner on Pune-Satara road to the vehicle of Chandrashekhar, who died in the said accident. Hence, the claim for compensation was filed by the Plaintiffs.

6. The owner/Opponent and the Insurance Company were

served. The opponent did not appear before the Court and hence claim proceeded ex-party. However, the Insurance Company filed written statement and contested the Petition mainly on the ground that the driver of the offending Tata vehicle was not negligent. After considering the oral as well as documentary evidence tendered by both the parties, the Tribunal arrived at a conclusion that compensation of Rs. 3,44,000/- is just and adequate.

7. Being aggrieved by the said judgment and award, the Insurance Company preferred this Appeal. The point of determination is that whether the award and judgment passed by the Tribunal is just and proper or not. The learned counsel for the Insurance Company submits that the amount awarded by the Tribunal is excessive and mainly on the ground of deduction. This claim is contested by the Insurance Company. He submitted that as per the ratio laid down in the case of “Sarla Verma & Ors. vs Delhi Transport Corp. & Anr., (S.C.), Civil Appeal No. 3483 of 2008 decided on 15th April, 2009” the deduction of a unmarried deceased should be one-half. However, the Tribunal has erred and awarded one-third deduction.

8. The learned counsel for the Claimants supported the judgment and award passed by the Tribunal and submitted that the deceased was the only earning member in their family and also submitted that Respondent Nos. 3 and 4 are the sisters who are dependent on the deceased. He submitted that the elder sister though was married, she is destitute and another sister is unmarried and a student. Hence, one-half deduction is correct.

9. The short issue involved in this matter is that the deduction. In view of the ratio laid down in the case of "*Sarla Verma*" (supra) one-half is to be deducted in the case of unmarried deceased person. However, it appears that in the present case, the claimant No. 3 was a sister and though she was married she was deserted by her husband and staying with the deceased. So also Respondent No. 4 is a student and a unmarried sister of the deceased. Considering all these facts the one-third deduction is said to be just and adequate.

10. Hence, the order passed by the Tribunal is hereby maintained.

11. The statutory amount of Rs. 25,000/- deposited in this Court is to be transferred to the M.A.C.T., Pune.

12. The original Claimants are allowed to withdraw the amount as directed by the Tribunal.

13. Accordingly, First Appeal No. 2462 of 2005 stands dismissed.

(MRS.MRIDULA BHATKAR, J.)