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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 477 OF 2018
WITH
CIVIL APPLICATION No. 1428 OF 2018

United India Insurance Co. Ltd. … Appellant
Vs.
Seeta Rajesh Choure & Ors. … Respondents

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Ms. Varsha Chavan, for the Appellant.

None for the Respondents.

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CORAM : V. M. DESHPANDE, J.

DATE : JUNE 28 2018

PC.

1. Heard the learned counsel Ms. Varsha Chavan, for the Appellant – United Indua Insurance Co. Ltd. By the present appeal, Appellant is challenging the judgment and award dated 3rd July, 2017 passed by the Member, Motor Accident Claims Tribunal, Vasai in MACP No. 81 of 2010. By the impugned judgment and award, the learned Tribunal directed the Opponent Nos. 1 and 2 therein, viz. Appellant and Respondent

No. 6 in this appeal, jointly and severally to pay Rs. 16,93,900/-, including no fault liability claim under Section 140 of the Motor Vehicles Act, 1988 alongwith 9% interest from the date of institution of the claim till realisation of the entire amount.

2. Respondent Nos. 1 to 5 herein filed claim petition before the Tribunal for compensation. The claim petition was required to be filed in view of death of one Rajesh, who expired in the accident dated dated 28th November, 2009 at Mumbai on Mumbai – Ahmedabad road. At the relevant time, deceased was riding on Motor Cycle No. MH 04 EC – 9045 and he dashed the motor cycle from behind to the Motor Cycle No. MH-04 CQ 5351. The said Motor Cycle was insured with the Appellant.

3. Though the Insurance Company by written-statement stated that accident occurred due to exclusive negligence of deceased Rajesh, therefore, Appellant being the insurance company of Motor Cycle No. MH-04 CQ 5351, was not responsible.

4. Though the stand was specifically taken by the

Insurance Company that the accident occurred solely due to negligence on the part of the deceased Rajesh, no evidence to that effect was brought on record by the insurance company. Therefore, in my view, the learned Tribunal has rightly negatived the claim of the insurance company in that behalf and rightly recorded the finding that the unfortunate incident occurred due to the negligence of rider of Motor Cycle No. MH-04 / CQ 5351.

5. It is also the contention of the Appellant that quantum of compensation is on excessive side. At the relevant time, the deceased Rajesh was drawing salary. His salary slips are produced on record (Exhibits 23 and 48) and an authorised person PW 2 Dharampal has proved the same. The net monthly salary of the deceased was found to be Rs. 14,596/-. The learned Tribunal on the basis of record found that at the time of death, Rajesh was 35 years of age. Since his monthly net salary was Rs. 14,596/-, yearly net income of the deceased is to be Rs.1,75,152/-. The learned Tribunal, in my view, has correctly

applied the law laid down by the Apex Court in ***Sarla Verma's*** case[1] by applying multiplier 16. In my view, therefore, the learned Tribunal has not committed any fault in awarding Rs. 16,93,900/- including no fault liability claim under S. 140 of the Motor Vehicles Act, 1988. No case is made out for interference in the impugned order. Hence, the present first appeal is dismissed with no order as to costs.

6. Needless to state that pending Civil Application No. 1428 of 2018 filed for stay does not survive and disposed of, since the main appeal is dismissed.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath

1 AIR 2009 SC 3104