IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3109 OF 2009

United India Assurance Co. Ltd.
Branch Office Beed,
Through its Divisional Manager
Divisional Office, Osmanpura
Aurangabad. Appellant

Versus

1. Savita w/o Gautam Tate
   Age 32 years, occ. household
   r/o Bhimnagar, Tate Galli
   r/o Parali Vaijnath, Dist. Beed.

2. Prajakta d/o Gautam Tate
   age 6 years, occ. education

3. Tathagat s/o Gautam Tate
   age 13 years, occ. education

   Respondents no. 2 and 3 are under
   guardianship of their mother i.e.
   respondent no.1.

4. Santram s/o Lobhaji Tate }
   age 70 years, occ. Nil } Deleted vide order dated 11.02.2019
   r/o as above. }

5. Sarjabai w/o Santram Tate
   age 64 years,
   r/o as above.

6. Datta Bhimrao Kolekar
   age major, occ. agril.
   r/o Kaudgaon(Ghoda)
   Post Sonpeth, Tq. Parli Vaijinath
   Dist. Beed Respondents

Mr. S.G. Chapalgaonkar, advocate for appellant.
Mr. S.A. Ambad, advocate for respondents 1 to 3 and 5.

Mr. R.K. Ashtekar, advocate for respondent no. 6.

CORAM : P.R. BORA, J.
DATE : 11th FEBRUARY, 2019

JUDGMENT :

1. Leave to delete name of respondent no. 4 since he is expired. Legal heirs of deceased respondent no. 4 are already there on record.

2. Aggrieved by the judgment and award passed in Motor Accident Claim Petition No. 38/2004 by the Motor Accident Claims Tribunal at Ambajogai on 31.03.2007, the insurance company has preferred the present appeal.

3. The aforesaid claim petition was filed by present respondents no. 1 to 5 claiming compensation on account of death of one Gautam Tate alleging the same to have been caused in a vehicular accident happened on 10th February 2004, having involvement of tractor and trolley owned by present respondent no. 6 and insured with the appellant-insurance company. Deceased Gautam was a pillion rider on the motorcycle of one Maruti. It was the contention of the claimants that the said motorcycle was dashed by the offending tractor and trolley and, in the accident so happened, Gautam suffered death. It was further contention of the claimants that the alleged accident happened because of the sole negligence on the part of the driver of the tractor.

4. The claim was resisted by the insurance company mainly on the ground that in occurrence of the alleged accident the deceased motorcyclist was negligent. The tribunal however

seems to have turned down the said objection and held the driver of the tractor solely responsible for occurrence of the alleged accident and awarded compensation to the tune of Rs. 5,40,000/- jointly and severally from the owner and the insurance company of the said tractor. Aggrieved by the same, the insurance company has preferred the present appeal.

5. Mr. Chapalgaonkar, learned counsel for the insurance company submitted that the tribunal has failed in appreciating the evidence on record which has resulted in recording an erroneous finding by it holding the tractor driver solely negligent in occurrence of the alleged accident. The learned counsel contends that from the evidence on record, it is quite evident that in occurrence of the alleged accident the deceased motorcyclist was infact responsible and in no case entire negligence could have been attributed on the part of the driver of the tractor.

6. The argument so made by the learned counsel however is liable to be rejected at the threshold in view of the fact that the claim was filed by the legal heirs of deceased Gautam who was admittedly a pillion rider. In any case, no blame can be attributed on the part of deceased Gautam so as to make apportionment of negligence. Even otherwise, it is the choice of the claimants against whom to proceed out of the two tortfeasors. In the circumstances, it does not appear to me that the findings recorded in the judgment are required to be interfered with on this count. Insofar as quantum of compensation is concerned, after having read the judgment delivered by the tribunal, it appears to me that the tribunal has awarded just and fair compensation. In the

circumstances, I do not see any reason to cause interference in the impugned judgment and award.

7. The appeal being devoid of substance deserves to be dismissed and is accordingly dismissed. The amount deposited by the insurance company in this Court in the present appeal is permitted to be withdrawn by the claimants alongwith interest accrued thereon. The apportionment shall be in tune with the impugned judgment and award. Needless to state that the amount falling to the share of deceased respondent no. 4 will equally be distributed amongst the surviving legal heirs of the deceased.

8. Pending civil application, if any, does not survive and stands disposed of.

(P. R. BORA, J)

dyb