IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1009 OF 2022

United India Insurance Co. Ltd.,
Branch Manager,
United India Insurance Co.,
Shriram Complex Old Agra Road,
Deopur, Dhule
Through its Divisional office
Authorized Signatory
United India Insurance Company
T.P. Hub, Osmanpura, Aurangabad

...APPELLANT

VERSUS

1. Seema Sadashiv Mahale
Age : 19 years, Occ : Agricultural work (Now Nil),
R/o Lamkani, Tq. & Dist. Dhule.

2. Sandip Sadashiv Mahale
Age : 27 years, Occ : (Driver & owner) Service,
R/o Lamkani, Tq. & Dist. Dhule.

...**RESPONDENTS**

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Advocate for appellant : Mr. A.S. Usmanpurkar
Advocate for respondent nos.1 and 2: Mr.Sanket N. Suryawanshi

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CORAM : S. G. DIGE, J.

DATE : 26.09.2022

ORAL JUDGMENT :

. The challenge raised in this appeal is to the judgment and award passed by the Member, Motor Accident Claims Tribunal, Dhule (For short, “the Tribunal”) below Exhibit-5 (No Fault Liability) Application under section 140 of the Motor Vehicles Act, 1988 (For short, “the M.V. Act”).

2. The learned counsel for the appellant submits that the appellant – respondent no.2 resisted the claim of the claimant by filing written statement at Exhibit-15. The appellant denied its liability on the ground that the insurance policy issued does not cover the risk of pillion rider. The claimant was traveling as pillion rider on motorcycle bearing no.MH-18-AL-0866, which is insured under liability only policy i.e. third party policy. The claimant is not third party. Hence insurer is not liable to pay any compensation, there are other grounds raised in written statement. However, this fact was not considered by the Tribunal and passed the impugned award against the appellant to pay Rs.25,000/- to the claimant. Hence requested to allow the appeal.

3. It is contention of the learned counsel for the respondent – original claimant that the Tribunal has

considered all the aspects while passing the order. Under no fault liability, it is not necessary to see who is at fault. The offending motorcycle was insured with the appellant, hence the appellant is required to pay the compensation. The order passed by the Tribunal is legal and valid.

4. I have heard both the learned counsel counsel. Perused the order passed by the Tribunal.

5. The Tribunal has allowed the application under section 140 of the M.V. Act filed by the respondent-original claimant. It is the contention of the appellant that the insurance policy is act only policy, so insurance of pillion rider under the said policy was not covered under the said policy. The said fact is mentioned in the written statement filed by the appellant. In my view, for deciding this fact the evidence is required, both the learned counsel submitted that the evidence under section 166 of the M.V. Act is going on before the Tribunal. If the Tribunal is directed to decide the application under section 140 of the M.V. Act along with application under section 166 of the M.V. Act and decide whether the claimant is

entitle for compensation amount of Rs.25,000/- under no fault liability, the purpose would be suffice.

6. In view of the above, I pass the following order :-

ORDER

(i) The appeal is allowed.

(ii) The order passed by the Tribunal below Exhibit-5 is quashed and set aside.

(iii) The application below Exhibit-5 under section 140 of the M.V. Act is remanded back to the Member, Motor Accident Claims Tribunal, Dhule for deciding afresh along with the pending application under section 166 of the M.V. Act on its own merits.

(iv) The amount of Rs.25,000/- deposited by the appellant before this Court be transmitted to the Tribunal, Dhule. The said amount will be disbursed subject to final outcome of the pending application under section 166 of the M.V. Act.

(v) The appeal is disposed of in above terms.

(S. G. DIGE)
JUDGE

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SGA/-