

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO.1348 OF 2007
WITH
CAF/1550/2005**

The New India Assurance Co. Ltd ... Appellant

Vs.

Ahilya Purshottam Kharshikar & Ors. ... Respondents

Mr.S.S. Vidyarthi i/b S.M. Vidyarthi for the Appellant
Mr.A.M. Gokhale a/w Mr.Piyush N. Shah for Respondent Nos.1 & 2

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 14th JANUARY, 2016

ORAL JUDGMENT:

1. In this appeal, the judgment and award dated 15.8.2006 passed by the additional Member, Motor Accident Claims Tribunal, Pune, is hereby challenged. It is a death claim filed by the respondents, who are the parents of the deceased Abhinay Karshikar, who lost his life when he was 24 years old in a vehicular accident on 1.12.2000 at 3.30pm. He was riding one Hero Honda motor cycle when a truck bearing No.MH-12/R-9823 driven by the opponent No.1 which came in a rash and negligent manner and gave dash on rear side of the motorcycle of Abhinay. He was dragged towards the truck and crushed under its wheels. He died due to the injuries of the accident on the same day. He was working as a commission agent for Bajaj Auto Finance Ltd. His parents, the

respondents, filed claim u/s 166 of the Motor Vehicles Act, which was partly allowed and the opponents were directed to pay the compensation of Rs.5,77,000/- to the applicants alongwith interest @ 7.5% from the date of the application. Hence, this appeal.

2. Learned Counsel for the appellants submits that the challenge is mainly on the ground of quantum and assessment of the monthly income of the deceased. The learned Counsel submitted that in view of the ratio laid down in the judgment of **Sarla Verma vs. Delhi Transport Corporation**¹, the other defences in the appeal will not sustain. He submitted that the deceased was working as an agent of the Bajaj Auto Finance. So he was not a salaried person. The learned Member has also observed that it was not a continuous regular income that he was getting but it was case to case income that he was drawing. Therefore, his monthly income which is considered as Rs.5,500/- should have been lesser.

3. The learned Counsel for the respondents/original claimants supported the judgment and award passed by the Member, Motor Accident Claims Tribunal, Pune.

4. Perused the impugned judgement and award. The deceased was 24 years old, when he died. It has come in the evidence that he had taken

¹ (2009) 6 SCC 121

admission for DBM and M.Com (Part I). Thus, he was a commerce graduate when he died. He was serving with Bajaj Auto Finance Ltd. and evidence was given that he was getting Rs.8,000/- to Rs.10,000/- per month. The learned Judge has after considering the oral as well as documentary evidence by the claimants, has discussed the evidence on the point of earning that he was authorised agent for loan cases for Bajaj Auto Finance Ltd. and he was working to investigate the loan cases.

5. Considering that the deceased was a salaried person and was getting commission on the business, I am of the view that the amount fixed as Rs.5,500/- per month is reasonable and cannot be said as excessive. Accordingly, the amount of his annual income which was fixed by the Tribunal is found correct and so I am of the view that the compensation awarded is just and does not require any interference.

6. Hence, the appeal is dismissed. The statutory amount of Rs.25,000/- shall be transferred to the Motor Accident Claims Tribunal, Pune.

7. In view of the disposal of the appeal, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)