

Court No. - 2

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 263 of 2006

Appellant :- Dharambeer Singh And Others

Respondent :- Shri Chandrabhan Singh And Another

Counsel for Appellant :- Sanjay Agrawal

Hon'ble Saral Srivastava,J.

Order on Civil Misc. Delay Condonation Application No.51400 of 2006.

Heard learned counsel for the appellant, however, no one is present on behalf of the respondent even in the revised call.

Learned counsel for the appellant is directed to serve a copy of memo of appeal upon Sri Arvind Kumar, Advocate who is the retainer of New India Insurance Company Ltd.

This Court has requested to Mr. Arvind Kumar, Advocate to appear and assist the Court on behalf of the respondent-New India Insurance Company Ltd.

The appeal is reported to be beyond time by 263 days.

The appellant has filed the delay condonation application praying for condonation of delay in filing the appeal.

I have perused the affidavit filed in support of the delay condonation application.

Learned counsel for the respondents submits that the delay has not been properly explained.

The appellant has properly explained the delay in filing the appeal and delay in filing the appeal is bona fide.

Consequently, the delay in filing the appeal is condoned and the appeal shall be treated to have been filed in time.

The delay condonation application is **allowed**.

Order on Appeal.

1. Heard learned counsel for the claimants/appellants and learned counsel for the respondents.

2. The present appeal has been filed by the claimants/appellants for enhancement of compensation.

3. Learned counsel for the claimants/appellants has contended that the accident had taken place in the year 2003, and therefore, the tribunal has erred in law in assessing the compensation holding the income to be Rs.15,000/- per annum. It is submitted that at the relevant time, income of a person involved in private tuition was not less than to Rs.2500/- per month i.e. Rs.30,000/- per annum, and accordingly, it is submitted that the award of compensation is on lower side, and therefore, tribunal should have computed the compensation by taking the income of the deceased to be Rs.30,000/- per annum. It is further submitted that considering the age of the deceased, the claimants/appellants are also entitled to 40% towards future prospect in view of the judgement of Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others 2017 (16) SCC 680**. It is further contended that Tribunal has erred in applying the multiplier of 13 though the Tribunal in the present case should have applied the multiplier of 18 considering the age of the deceased.

4. It is further submitted that that there were six dependents upon the deceased, therefore, considering the judgement of the Apex Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and others 2009 (6) SCC 121**, Tribunal should have deducted 1/4th towards personal expenses of the deceased.

5. Per contra, learned counsel for the respondents submits that compensation awarded by the Tribunal is just and proper and does not call for any interference by this Court in appeal.

6. I have considered the rival submissions of the parties and perused the record.

7. The accident is stated to have taken place in the year 2002. It is a common knowledge that in the year 2002, even the income of a private tutor was Rs.2500/- per month i.e. Rs.30,000/- per annum. Considering the said fact, this Court holds that the compensation should be computed by taking the income of the deceased to be Rs.30,000/- per annum in place of Rs.15,000/-.

8. The submission of learned counsel for the claimants/appellants in respect of future prospect has also got force in view of the judgement of Apex Court in the case of **Pranay Sethi (supra)** and thus, following the aforesaid judgement of Apex Court, claimants/appellants are entitled to 40% towards future prospect considering the age of the deceased.

9. The submission of learned counsel for the claimants/appellants in respect of wrong application of multiplier has also substance in view of the judgement of Apex Court in the case of **Sarla Verma (supra)**. Thus, it is provided that compensation should be computed by applying the multiplier of 18 instead of 13.

10. Lastly, the submission of learned counsel for the claimants/appellants with regard to deduction of 1/4 towards personal expenses of the deceased in view of the judgement of Apex Court in the case of **Sarla Verma (supra)** has got substance. Thus, considering the dependents upon the deceased, it is provided that 1/4th should be deducted towards personal expenses of the deceased from the income of the deceased for computation of compensation.

11. It is also provided that enhanced amount of compensation shall carry 6% simple interest from the date of institution of claim petition till the date of its payment.

12. For the reasons given above, the appeal is partly allowed and award of the Tribunal is modified to the extent as indicated above. Insurance company is directed to pay the enhanced amount of compensation to the appellant/claimant within a period of three months. There shall be no order as to cost.

Order Date :- 31.10.2023
R.S. Tiwari