

Court No. - 2

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 1816 of 2010

Appellant :- Smt. Manoj Kumari And Others

Respondent :- Gokaran Nath Misra And Another

Counsel for Appellant :- Ram Singh

Counsel for Respondent :- Puneet Srivastava

Hon'ble Saral Srivastava,J.

Order on Civil Misc. Delay Condonation Application No.320295 of 2010.

Heard learned counsel for the appellants.

The appeal is reported to be beyond time by 134 days.

The appellants have filed the present delay condonation application praying for condonation of delay in filing the appeal.

The appellants have explained the delay in filing the appeal in paragraphs 2 to 8 of the affidavit filed in support of delay condonation application.

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

The appellants have 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. Counter affidavit filed today on behalf of the respondents is taken on record.
2. Heard Shri Ram Singh, learned counsel for the appellants and Shri Puneet Srivastava, learned counsel for the respondents.
3. The present appeal has been filed by the appellants/claimants for enhancement of compensation.
4. Challenging the award, learned counsel for the claimants/appellants has contended that no amount towards future prospect has been awarded to the claimants/appellants whereas they are also entitled to 40% towards future prospect considering the age of the deceased 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 submitted that that there were six dependants upon the deceased, therefore, in view of 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 instead of 1/3rd.
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 submission of learned counsel for the appellants/claimants in respect of future prospect has also got force. Thus, following the aforesaid judgement of Apex Court in the case of ***Pranay Sethi (supra)*** and considering the age of the deceased,

claimants/appellants are entitled to 40% towards future prospect.

8. 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 dependants upon the deceased, it is provided that 1/4th should be deducted towards personal expenses of the deceased instead of 1/3rd from the income of the deceased for computation of compensation.

9. 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.

10. For the reasons given above, the appeal is partly ***allowed*** and award of the Tribunal is modified to the extent indicated above. Insurance company is directed to pay the enhanced amount of compensation to the claimants/appellants within a period of three months from the date of production of certified copy of this order. There shall be no order as to cost.

Order Date :- 13.10.2023

A. Prajapati