

**Court No. - 2**

**Case :-** FIRST APPEAL FROM ORDER No. - 924 of 2009

**Appellant :-** Janki W/O Late Rajeev And Others

**Respondent :-** New India Insurance Co. And Another

**Counsel for Appellant :-** Samir Sharma(Senior Adv.),Gajala  
Srivastava,Manish

**Counsel for Respondent :-** S.P. Lal

**Hon'ble Saral Srivastava,J.**

**Order on Civil Misc. Delay Condonation Application No.4 of  
2020**

Heard learned counsel for the appellants and learned counsel for the respondents.

The appellants have shown sufficient cause for the delay in filing the substitution application in the affidavit filed in support of the delay condonation application.

The delay in filing the substitution application is condoned.

The delay condonation application is **allowed**.

**Order on Civil Misc. Substitution Application No.3 of 2020**

Heard learned counsel for the appellants and learned counsel for the respondents.

The present substitution application has been filed by the heirs of appellant No. 1, Janaki, who died on 13.09.2019, for substituting their names in the array of parties.

No counter affidavit has been filed on behalf of the respondents.

Consequently, the substitution application is **allowed**.

Let necessary correction/substitution be incorporated in the array of parties within ten days.

### **Order on Appeal**

1. Heard learned counsel for the appellants learned counsel for the respondents.

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

3. Challenging the award, learned counsel for the claimants-appellants has submitted that the accident had taken place on 06.01.2007 and the tribunal has erred in computing the compensation treating the income of the deceased to be Rs.15,000 per annum. Accordingly, it is submitted that tribunal should have taken Rs.42,000/- per annum as income of the deceased for computing the compensation. 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**. He contends that award of Rs.5,000/- towards non-pecuniary damages awarded by the Tribunal is on lower side. It is further submitted that that there were four 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.

4. 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.

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

6. The submission of learned counsel for the claimants-appellants in respect of assessment of income of the deceased has substance. It is provided that the income of the deceased should be taken to be Rs.42,000/- per annum for the purpose of computation of compensation. The submission of learned counsel for the appellants/claimants in respect of future prospect and grant of non-pecuniary damages 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. Further, the non-pecuniary damages awarded by the Tribunal is also on lower side, therefore, it is enhanced from Rs.5,000/- to Rs.70,000/-.

7. 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.

8. 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.

9. 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 :- 12.10.2023**

A. Prajapati