Ct. No. 26

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F.M.A. 847 of 2008

With

IA No. CAN 1 of 2012 (Old No. CAN 8235 of 2012)

Fuleswari Mejhain & Ors.

Vs.

National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy ...For the Appellants/Claimants

Mr. Rajesh Singh ...For the Respondent/Insurance Co.

In view of the reasons shown in the application being CAN 1 of 2012, the delay in preferring the appeal is condoned and the appeal is regularized. The application for condonation of delay is disposed of.

By consent of the parties the appeal is taken up for final hearing by treating the same as on day's list.

The learned Counsel, appearing on behalf of the appellants/claimants submits that during the pendency of the appeal the appellant numbers 3 and 4 have attained majority. On such submission and prayer made by the learned Counsel, the appellant nos. 3 and 4 be treated as majors. No serious objection is raised by the learned Counsel appearing on behalf of the respondent/Insurance Company.

The concerned Department is directed to tag the application, if any, with the main appeal.

The appeal is directed against the judgment and award dated November 28, 2007 passed by Fast Track, 1st Court, Asansol, in M.A.C. Case No. 09 of 2007/172 of 2005.

It is submitted on behalf of the claimants that the Tribunal erred in not granting any amount under 'future prospect' on the income of the deceased. Claimants are also aggrieved that instead of Rs.70,000/- they were given only

Rs.9,500/- under the full component of 'general damages'. Finally, claimants took the plea that in view of 4 numbers of dependents, the deduction for 'personal expenses' should have been 1/4th of the income of the deceased and not 1/3rd as done by the Tribunal. Accordingly, it was argued that a lesser quantum of compensation has been wrongfully awarded by the Tribunal.

Learned Counsel for the Insurance Company is represented.

Considering the judgements of ***Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.***, reported in **(2009) 6 SCC 121** and ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.***, reported in **(2017) 16 SCC 680**, I find substance in the arguments made on behalf of the appellants. Appellants are justified in praying for 50% addition on account of 'future prospect' on the income of the deceased and they should also get Rs.70,000/- under collective heads of general damages. The deduction for 'personal expenses' should be 1/4th of the victim's income. Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

The income of the victim being Rs.1,20,000/- per annum, addition of 50% 'future prospect' brings it to Rs.1,80,000/-. After 50% deduction of 'contributory negligence' as held by learned Tribunal, the loss of dependency comes to Rs.90,000/- per annum. For 'personal expenses', 1/4th is deducted and then it is the amount of Rs.67,500/- on which the multiplier of 17 is applied to reach the net pecuniary compensation of Rs.11,47,500/-. Claimants are also entitled to Rs. 70,000/- on account of loss of consortium, loss of estate and funeral expenses, taking the gross compensation to Rs.12,17,500/- together with interest thereon at the rate of 6% per annum from the date of lodging the claim till the date of receipt of the amount.

The claimants acknowledge receipt of the awarded amount of Rs.6,89,500/- along with interest. Accordingly, the balance enhanced sum of Rs.5,28,500/- would become payable to the appellants by the Insurance Company, together with interest assessed at the rate of 6 per cent per annum on and from the date of filing of the claim petition within a period of 45 days from the date of receipt of the bank account particulars of the appellants. Learned Counsel for the appellants will forward the bank account details of the appellants within a fortnight from date to learned Counsel for the Insurance Company. The payment shall be made in the same manner and proportion as decided by the Court below.

With the aforesaid directions the instant appeal is disposed of.

There will be no order as to costs.

The Registry is directed to send down the lower Court records at once, if received by this time.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shekhar B. Saraf, J.)