Ct No 26

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02.7 2021

F.M.A.T. 320 OF 2016
with
I.A. No. CAN 1 OF 2020
(Old No.CAN 2204 of 2020)

(Via Video Conference)

Assarafennachha Mondal & Ors.
Vs.
Purnendu Ghosh & Anr.

Mr. Muktakesh Das
...For the Appellant/Claimant

Mr. Sanjay Paul
...For the respondent No.2/
Oriental Insurance Co.

I.A. No. CAN 1 of 2020
(Old No.CAN 2204 of 2020)

This is an application for condonation of delay in filing the instant appeal.

On perusal of the pleadings, this Court is satisfied that cause shown for delay in filing of the appeal is sufficient and prayer for condonation of delay should be allowed.

Accordingly, the application for condonation of delay stands allowed. Register the appeal if it is in form.

F.M.A.T. 320 OF 2016

This instant appeal case filed by the claimants against the award and/or Judgment dated 14.05.2015 passed by the Learned M.A.C. Tribunal, Judge, 3rd Court, Krishnanagar, Nadia in M.A.C. Case no 144 of 2009 on a claim under Section 166 of Motor Vehicle Act.,1988 for the accidental death of Ibrahim Mondal.

The facts of the case are not in dispute.

The claim was filed under Section 166 of the M. V. Act, 1988. The Learned Advocate for the appellant/claimant submits that the Learned Tribunal committed error in law while not assessing the annual income of the deceased Rs. 15,000/ instead of Rs.36,000/ i.e. Rs.3,000/ p.m. The Learned Advocate for the appellant/claimant submits that the Learned Tribunal also committed error in law while not granting 40% additional income towards future prospect since the deceased was 38 years old self employed person. The Learned Advocate for the appellant/claimant submits that the Learned Tribunal also committed error in law while granting Rs.9,500/ instead of Rs.70,000/ towards general damages. The Learned Advocate for the appellant/claimant further submits that the Learned Tribunal committed error in law while deducting 1/3rd instead of 1/4th income towards personal expenses.

Learned Advocate for the respondent insurance company submits that the Learned Tribunal is just while not assessing monthly income of the deceased Rs.3,000/ since the claimants failed to produce any cogent evidence before the Tribunal to establish the monthly income of the deceased. The Learned Advocate for the respondent insurance company further submits that the Learned Tribunal committed error in law while adopting multiplier 16 instead of 15.

Be that as it may, considering the rival submissions of the parties as well as judgment of Hon'ble Apex Court as well as general practice of our High Court, above award passed by the Tribunal below is modified and recalculated as follows:

Monthly income		Rs.3,000/
Annual Income =		Rs 36,000/
Add Future Prospect 40 %		Rs 14,400/
Total Income		Rs. 50,400/
Less personal expenses (1/4th)		Rs. 12,600/
Annual loss of dependency		Rs 37,800/
Multiplier 15	(Rs 37,800 x 15)	Rs 5,67,000/
Add General Damages		Rs 70,000/
Total compensation =		Rs 6,37,000/

The Learned Advocate for the appellants acknowledge that his clients have received the awarded amount of Rs. 1,69,500/ along with interest thereon. Therefore, balance sum of Rs. 4,67,500/ further payable by the insurance company along with interest @6% from the date of filing of claim application till payment to the claimants within 30 days of receipt of particulars of their bank accounts to be supplied by their counsel to the counsel for the insurance company.

It is made clear that the payments shall be made by NEFT/ RTGS in the proportion as ordered by the Court below.

With the aforesaid direction, the instant appeal is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Shekhar B. Saraf, J.)