

S/L 12
22.7.2021
Court No.26
AD

FMAT 500 of 2019
With
IA No.: CAN 1 of 2019 (Old No.: CAN 12574 of 2019)
(Via Video Conference)

Smt. Bijaya Khilari & Ors.
Vs.
The National Insurance Co. Ltd. & Anr.

Mr. Jayanta Banerjee
Mr. Sanjay Paul
...for the Appellants/Claimants.
...for the Respondent/Insurance Co.

IA No.: CAN 1 of 2019 (Old No.: CAN 12574 of 2019)

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.

The application for condonation of delay is, thus, disposed of.

FMAT 500 of 2019

The appeal is directed against the judgment and award dated 10th October 2018, passed by the Additional District Judge, Motor Accident Claims Tribunal, 6th Court, Paschim Medinipur in M.A.C. Case No. 189 of 2016.

The facts of the case are not in dispute.

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988. The learned Advocate for the appellants/claimants submit that the learned Tribunal committed error in law while not granting 40% additional income towards future prospect since the deceased was engaged in an unstable job and was 32 years old at the time of accident.

The learned Advocate for the appellants submitted that the claimants are entitled to get compensation in view of the law as laid down in *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.

In reply, Mr. Paul, learned Advocate for the Insurance Company submits that the learned Tribunal committed error in law while assessing monthly income of the deceased Rs.6,000/- since the claimants failed to prove the income of the deceased by producing any cogent evidence.

Heard the parties. It is evident that to prove the income of the deceased, the claimants produced the employer of the deceased, PW-3, but that was insufficient to assess monthly income of the deceased as Rs.7,500/- but Rs.6,000/- is not so exorbitant since the deceased was maintaining his family consisting of 5 dependants. Therefore, the monthly income of

the deceased Rs.6,000/- as assessed by the tribunal is found just and reasonable.

Considering the above, the award passed by the Tribunal below is modified and recalculated as follows:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly Income	Rs.6,000/-
Add: Future prospect 40%	<u>Rs.2,400/-</u>
	Rs.8,400/-
Annual Income (X 12)	Rs.1,00,800/-
Less: 1/4 th for personal expenses	<u>Rs. 25,200/-</u>
	Rs.75,600/-
Multiplier(16)- Rs.75,600 x 16	Rs.12,09,600/-
Add: General Damages	<u>Rs.70,000/-</u>
	Rs. 12,79,600/-
Less: Awarded amount already paid	<u>Rs. 9,64,000/-</u>
Enhanced Principal amount	Rs.3,15,600/-

The claimants acknowledge receipt of the awarded amount of Rs.9,64,000/- in terms of the direction of the Tribunal. Accordingly, the balance enhanced sum of Rs.3,15,600/- would become payable to the appellants by the Insurance Company together with interest assessed @ 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.

Mr. Banerjee acknowledges that his clients have received only awarded sum of Rs.9,64,000/- but no amount towards interest, as granted by the Tribunal, was deposited by the insurance company.

In reply, Mr. Paul submits that he has no instruction regarding non-deposit of interest as granted by the Tribunal.

Be that as it may, the Insurance Company is directed to pay the interest @ 6 % p.a. on the awarded sum of Rs.9,64,000/- from date of claim application till date deposit of such amount before the Tribunal, if not paid earlier.

Learned counsel for the appellants will forward the bank account details of the appellants within a fortnight from date to the learned counsel for the Insurance Company. The payment shall be made in the proportion decided by the Court below.

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

There shall be no order as to costs.

In view of the disposal of this appeal, connected application, if any, is also disposed of.

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

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 given to the parties, upon compliance of all formalities, on priority basis.

(Shekhar B. Saraf, J.)