29.07.2021
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(Via Video Conference)

F.M.A.T. 597 of 2016

I.A. CAN 1 of 2021

Dakhila Bewa & ors.
Vs.
The Oriental Insurance Co. Ltd. & anr.

Mr. Muktakesh Das ...For the Appellants/claimants

Mr. P. K. Pahari ... For the respondent/Insurance Co.

<u>Re : I.A. CAN 1 of 2021</u>

Since the original application is not found in the file, the photostat copy of the application for condonation of delay is taken on record and the same be treated as original.

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

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

Accordingly, the application for condonation of delay stands allowed.

<u>F.M.A.T. 597 of 2016</u>

By consent of the parties, the instant appeal is treated as on day's list and is taken up for hearing.

The department is directed to register the instant appeal immediately.

This instant appeal filed by the claimants against the order and judgement dated 30th June, 2015 passed by the learned Judge, Motor Accident Claims Tribunal and Additional District Judge, 4th Court, Nadia at Krishnanagar in M.A.C. Case No.116 of 2011 on a claim under Section 163A of Motor Vehicle Act, 1988 for the accidental death of Pagal Sk on 13.06.2019

The Fact of the case are not in dispute.

The Claim was filed under Section 163A of the Motor Vehicles Act, 1988. Learned Advocate for the appellants/claimants submits that the learned Tribunal also committed error in law while not assessing the income of the deceased at Rs.3,000/- per month instead of Rs.15,000/- per annum.

Learned Advocate for the respondent Insurance Company submits that the learned Tribunal is just while not assessing monthly income of the deceased at Rs.3,000/- since the claimants failed to produce any cogent evidence before the Tribunal to establish the monthly income of the deceased.

Be that as it may, considering the rival submissions of the parties as well as observation of the Hon'ble Supreme Court in **Laxmi Devi & Others Vs Mohammad Tabbar & Another** on **25 March 2008** 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/-
Less Personal Expenses 1/3		Rs.12,000/-
Annual loss of dependency		Rs.24,000/-
Multiplier 5 (Rs.24,000 X 5)		Rs.1,20,000/-
Add. General Damages (Rs.2000/- for Funeral Exp. + Rs.2500/- for Loss of Estate Rs.5000/- for Consortium Expenses)		Rs.9,500/-
Total Compensation	=	Rs.1,29,500/-

The appellants also submit that they have received the awarded amount of Rs.59,500/- along with interest.

Therefore, balance enhanced sum of Rs.70,000/- 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 till the date of realization.

The enhanced compensation together with interest as stated above is to be paid by the Insurance Company to the claimants within a period of 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 the payments shall be made by NEFT/RTGS in the proportion as ordered by the court below.

With the aforesaid direction, the instant appeal shall stand 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.

(Shekhar B. Saraf, J.)