

Ct. 28.9
No. 26
3
akb
2021

F.M.A.T. 658 of 2016

With

IA No. C.A.N. 1 of 2021

Swastika Mondal @ Sastika

Vs.

The New India Assurance Co. Ltd. & Anr.

(Via Video Conference)

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

**Mr. Rajdeep Bhattacharyya ...For the Respondent No. 1
The New India Assurance Co. Ltd.**

**Ms. Gopa Das Mukherjee ...For the respondent No. 2/The
Oriental Insurance Co. Ltd.**

Re.: IA No. C.A.N. 1 of 2021

In view of the reasons shown in the application, being CAN 1 of 2021, the delay in preferring the appeal is condoned and the appeal is regularised.

The application for condonation of delay is disposed of.

F.M.A.T. 658 of 2016

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

The claimant is complaining about the inadequate compensation granted by the learned Tribunal in its judgment and award dated February 22, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, 34d Court, Krishnanagar, Nadia in M.A.C. Case No. 166 of 2010 in a claim under Section 166 of the Motor Vehicles Act, 1988 in respect of an accident that took place on October 16, 2009.

The appellant states that instant claim application has been filed thereby praying compensation for injury suffered in the accident. The claimant submits that the claimant suffered 80% permanent disability and her elbow was amputated. The appellant stated that she was a private tutor and used to earn Rs. 11,500/- per month but failed to

prove the same accordingly in terms of the judgment passed by the Hon’ble Apex Court in the case of *Laxmi Devi and Others vs. Mohammad Tabbar and Another*, reported in (2008) 12 SCC165, the minimum notional income is held Rs.3,000/- per month. The appellant further points out that the claimant is also entitled to 40% on account of future prospect in terms of the judgment passed by the Hon’ble Apex Court in the case of *National Insurance Company Limited -Vs.- Pranay Sethi & Ors.*, reported in (2017) 16 SCC 680 and reasonable amount on account of non-pecuniary damage. However, learned Tribunal erred in not allowing the same.

Both the Insurance Companies are represented and contested by Mr. Rajdeep Bhattacharya, learned Counsel and Ms. Gopa Das Mukherjee, learned Counsel.

This Court after hearing the submissions of the parties is inclined to accept the contention of the appellant and accordingly the impugned order is modified and reassessed.

The impugned award is modified and the claimant is found entitled to a total amount of Rs.9,30,473/- together with interest thereon at the rate of 6% per annum from the date of lodging the claim till the receipt of the payment as indicated hereafter.

Annual Income (3,000 X 12)	Rs. 36,000/-
Add 40% future prospects	<u>Rs. 14,400/-</u>
Total income (36,000+14,400)	Rs. 50,400/-
After 80% loss of Income due to Permanent disablement 80% of 50,400	Rs. 43,200/-
Use Multiplier (18) (43,200 X 18)	Rs. 7,77,600/-
None-pecuniary damages	Rs. 50,000/-
Medical Expenses	<u>Rs. 1,02,873/-</u>
Total Compensation	<u>Rs. 9,30,473/-</u>

The claimant acknowledge receipt of a sum of Rs. 4,00,000/- with interest at the rate of 5% per annum from the date of lodging of the claim. The balance sum of Rs.5,30,573/- would become payable by both the Insurance Companies, in equal proportion, i.e. Rs. 2,65,236/- each together with interest assessed at the rate of 6% 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 appellant through NEFT/RTGS.

Learned Counsel for the appellant will forward the bank account particulars of the appellant within a fortnight from date to both the learned Counsel for the Insurance Companies.

With the aforesaid directions, the instant appeal being F.M.A.T. 658 of 2016 shall stand disposed of.

In view of disposal of the appeal, connected application, if any, is also disposed of. The concerned Department is directed to trace out the application and tag the same with this appeal.

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.)