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(Via Video Conference)

F.M.A.T 1159 of 2019
with
I.A. No.CAN 1 of 2021
with
I.A. No.CAN 2 of 2021

Dinesh Mudi & Ors.
Vs.
The Oriental Insurance Company Limited
& Anr.

Mr. Amit Ranjan Roy

...For the Appellants/
Claimants.

Ms. Sucharita Paul

....For the Respondent/
Insurance Company.

CAN 1 OF 2021

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 being CAN 1 of 2021 is disposed of.

CAN 2 OF 2021

This is an application for recording attainment of majority of the appellant/claimant no.2 who has become a major.

On perusal of the pleading and the documents annexed, this Court is satisfied and allows such prayer.

Accordingly, the application for attainment of majority being CAN 2 of 2021 is disposed of. The department is directed to take steps.

FMAT 1159 of 2019

The instant appeal has been filed by the appellants/claimants against the judgment and award dated April 22, 2019 passed by the Additional District Judge, 3rd Court cum Motor Accident Claims Tribunal, Paschim Medinipur in M.A.C. Case No. 315 of 2016 (CIS MACC 315 of 2016) in a claim under Section 166 of the Motor Vehicles Act, 1988.

The appellants/claimants submit that the deceased was earning Rs.5000/- per month as a helper of a mason. However, the tribunal erroneously took the monthly income to be Rs.4000/-. The appellants/claimants further submit that they are entitled to 40% future prospect on the income of the deceased in view of the law laid down in ***Smt. Sarala Verma & Ors. -vs.- Delhi Transport Corporation & Anr.***, reported in ***(2009) 6 SCC 121*** and in ***National Insurance Company Limited -vs.- Pranay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***.

Ms. Sucharita Paul counsel appearing on behalf of the respondent/Insurance Company submits that the

tribunal was correct in accepting the income of the deceased to be Rs.4000/- in absence of appropriate documentary evidence.

This Court is inclined to accept the submissions made on behalf of the Insurance Company. However, it is now accepted in this Court for some time that 2015 onwards, the basic income has to be taken as Rs.5000/- per month. Moreover, such amount of Rs.5000/- per month does not appear to be exorbitant at all for the year 2016, when the accident took place, as an unskilled worker working on all days could have earned Rs.5000/- per month. Accordingly, on such basis and considering the submissions advanced by the counsel for the parties, in my opinion, the monthly income of the deceased should be taken as Rs.5000/-.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

Particulars	Amount (Rs.)
Monthly Income	Rs.5,000/-
Add 40% future prospect	Rs.2,000/-

	Rs.7,000/-
Annual Income	Rs.84,000/-
Less 1/3 rd for personal expenses	Rs.28,000/-

	Rs.56,000/-
Multiplier '16'	Rs.8,96,000/-
Add 'General Damages'	Rs.70,000/-
TOTAL Principal Compensation	Rs.9,66,000/-
LESS – awarded by Tribunal and paid by insurer	Rs.5,82,000/-
BALANCE (enhancement)	<u>Rs.3,84,000/-</u>

The claimants/appellants acknowledge receipt of the awarded amount of Rs.5,82,000/- with interest, in terms of the direction of the tribunal. Accordingly, the balance enhanced sum of Rs.3,84,000/- would become payable to the appellants/claimants by the insurance company with interest assessed at the rate of 6% per annum 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 claimants/appellants.

Counsel for the claimants/appellants will forward the bank account details of the claimants/appellants within a fortnight from date to the counsel for the respondent/Insurance Company. The payment shall be made to the claimants' bank accounts directly, in the manner and proportion as decided by the Court below.

With the aforesaid directions the instant appeal is disposed of.

In view of the disposal of this appeal, connected applications, if any, are also disposed of. The department concerned is directed to tag the applications, if any, with the main appeal.

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.)