

S/L 17
02.7.2021
Court No.26
SD

FMAT 1162 of 2019
With
CAN 1 of 2019
(Old CAN 11093 of 2019)
(Via Video Conference)

Ajmira Bibi Mandal & Anr.
Vs.
The National Insurance Co. Ltd. & Ors.

Mr. Amit Ranjan Roy

...for the Appellants/ Claimants.

Mr. Afroze Alam

...for the Respondents/Insurance Co.

CAN 1 of 2019 (Old CAN 11093 of 2019):

This is an application for condonaion of delay in filling the instant appeal.

On perusal of the pleading, this court is satisfied that cause shown for delay in filling 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 2019 (old CAN 11093 of 2019) stands allowed.

F.M.A.T. No. 1162 of 2019:

The appeal is directed against the judgment and award dated June 12, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Purba Bardhaman, in M.A.C. Case No.15 of 2015 on claim under Section 166 of the Motor Vehicles Act, 1988.

The appellants/Claimants submit that the 18 years old victim was earning Rs. 9000/- per Month as a Mason and bachelor at the time of death, however, the Tribunal erroneously took the income to be 3000/- per month. The appellants/Claimants fairly submit that the multiplier adopted 18 is correct but deduction should be half instead of

one third where the deceased was bachelor, as considered and the claimants are also entitled to 40% future prospects on the income of the deceased in view of the law as it stands now after the judgment delivered by the Hon'ble Supreme Court in the case of ***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**.

Mr. Afroze Alam, counsel appearing on behalf of the insurance company argues that the Tribunal was correct in accepting the income of the victim to be Rs.3000/- in absence of any documentary evidence.

This Court is inclined to accept the submissions made on behalf of the insurance company. However it is now accepted in the court for some time that 2015 onwards, the base income has to be taken at Rs.5000/- per month. Moreover, such amount of Rs.5000/- per month does not appear to be exorbitant at all for the year 2015, as an unskilled worker working all days could have earned Rs.5000/-. Accordingly, on such basis and considering the submission as advanced by counsel for the parties, in my opinion, income of the victim should taken as Rs.5000/- per month.

The award therefore modified and reassessed. Upon taking monthly income of the victim to be Rs.5000/- and adding 40% on account of future prospects, the total notional income comes to Rs.7000/- per month. After annualizing such amount and deducting half (victim was bachelor at the time of death) on account of personal expenses, it is the figure of Rs.42000/- on which the multiplier 18 will however to be applied. The net pecuniary compensation comes to Rs.7,56,000/- after adding a further sum of Rs.30000/- on account general damages, the gross compensation comes to Rs.7,86,000/- together with interest thereon at rate of 6%

per annum from the date of lodgment of the claim till the date of receipt of the amount.

The claimants acknowledge receipt of a sum of the entire awarded amount of Rs.4,54,000/- along with interest. The balance sum of Rs.3,32,000/- would become payable to the appellants together with interest assessed at the rate 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.

Counsel for the appellants will forward the bank account details of the appellants within a fortnight from date to the counsel for the Insurance Company. The payment shall be made by the Insurance Company in the same proportion as 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 applications, if any, are also disposed of.

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.)