20.07.2021
ss

(Via Video Conference)
F.M.A.T. 1315 of 2019
I.A. CAN 1 of 2021

Aleya Mallick & anr.
Vs.
The National Insurance Co. Ltd. & anr.

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

Mr. D. N. Roy
... For the respondent/Insurance Co.

I.A. CAN 1 of 2021

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.

FMAT 1315 of 2019

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

The department is directed to issue F.M.A. number immediately.

This instant appeal case filed by the claimants against the award and/or judgement dated 15.03.2019 passed by the Learned Judge Motor Accident Claims Tribunal, 5th Court, Nadia at Krishnagar in MAC Case No.320 of 2015 on a claim under Section 166 of Motor Vehicle Act, 1988 for the accidental death of Rafik Mallick on 04.02.2015.

The facts of the case are not in dispute.

The claim was filed under section 166 of the Motor Vehicles Act, 1988. Learned Advocate for the appellants/claimants submits that the learned Tribunal committed error in law while not granting 40% additional income towards future prospect since the deceased was 22 years old self-employed person. Learned Advocate for the appellants/claimants submits that the learned Tribunal also committed error in law while granting Rs.15,000/- instead of Rs.70,000/- towards general damages.

Learned Advocate for the respondent/Insurance Company submits that the learned Tribunal is just while not assessing monthly income of the deceased Rs.4,500/- 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 **Smt. Sarla Verma & ors. Vs. Delhi Transport Corporation & anr.,** reported in **(2009) 6 SCC 121** as well as in **National Insurance Company Ltd. Vs. Pranay Sethi & ors.,** reported in **(2017) 16 SCC 680** as well as general practice of our High Court, the above award passed by the Tribunal below is modified and recalculated as follows :

Monthly income		Rs.4,500/-
Annual Income		Rs.54,000/-
Add. Future prospect 40%		Rs.21,600/-
Total Income		Rs.75,600/-
Less Personal Expenses 1/2 (Bachelor)		Rs.37,800/-
Annual loss of dependency		Rs.37,800/-
Multiplier 18 (Rs.37,800 X 18)		Rs.6,80,400/-
Add. General Damages (Rs.15000/- for Funeral Exp. + Rs.15000/- for Loss of Estate)		Rs.30,000/-
Total Compensation	=	Rs.7,10,400/-

The appellants also submit that they have received the awarded amount of Rs.5,01,000/-. Therefore balance enhanced sum of Rs.2,09,400/- would become payable to the appellants by the Insurance Company along 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 respective payments.

The enhanced compensation together with interest as stated above is to be paid by the Insurance Company to the claimants within a period 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 bearing FMAT No.1315 of 2019 shall stand disposed of.

There will be no order as to costs.

In view of the disposal of this appeal, the connected applications, if any, are also disposed of.

LCR, if any, may be returned back to the Court below.

Urgent Photostat certified copy of this order, if applied for be given to the parties upon compliance of all formalities.

(Shekhar B. Saraf, J.)