

S/L 10
23.8.2021
Court No.26
SD

FMAT 1225 of 2017
With
CAN 1 of 2021
(Via Video Conference)

Badal Mondal & Anr.
Vs.
National Insurance Company Ltd. & Anr.

Mr. Muktakesh Das

...for the Appellants/Claimants.

Mr. Saibalendu Bhowmik

...for the Respondents/Insurance Co.

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 stands allowed.

FMAT No.1225 of 2017

The instant appeal was filed by the claimants for enhancement of compensation upon receipt of awarded sum along with interest to the tune of Rs.4,96,447/- (Rupees four lakhs ninety six thousand four hundred forty seven only) in their claim case being MAC Case No.89 of 2015 under Section 166 of M V Act, 1988 passed on 12th August, 2016 by Additional District Judge, Fast Tract Court-IV , Krishnagar, Nadia.

The main grievance of the claimants is non consideration of the income of their deceased son at Rs. 4,800/- p.m. and future prospects of him who died at the age

of 21 years and also non granting general damages at an enhanced rate as per decision of Hon'ble Apex Court reported in **2017 ACJ 2700 (National Insurance Co. Ltd. Vs. Pranay Sethi)**. The claimants/ appellants say that their unmarried son used to work as Khalashi/Cleaner of a Truck met fatal accident on 29-01-2015 by the offending vehicle insured by the contesting Respondent Insurance Company.

Counsel representing Respondent Insurance Company on the other hands contends that the claimants failed to prove not only the location as well as income of their son by cogent evidence but also negligent driving of driver of the concerned vehicle. Further he points out that the correct deduction would be 1/2 instead of 1/3rd of income as applied by the Tribunal towards personal expenses. Counsel of the respondent also points out that the appellant no. 2 being the mother of the deceased victim is only entitled to get the compensation as class –I legal heirs of the victim as per Hindu Succession Act, 1956.

Be that as it may, it is admitted position that Insurance Company satisfied with the awarded sum passed by the Tribunal and did not prefer any appeal/cross objection.

Now considering the year of accident i.e. 2015, the age of the victim and the nature of job of the victim, this Court feels that awarded sum need enhancement on the principle of just compensation on the basis of above cited decision of Apex Court as well as general trends of this Court in various appeal matters.

Income would be taken at Rs. 4,500/- per month instead of Rs. 3,000/- per month with 40% future prospect for deceased victim dying at the age of 21+ years. However,

the victim being bachelor, the deduction towards personal expenses will be $\frac{1}{2}^{\text{nd}}$ instead of $\frac{1}{3}^{\text{rd}}$ and the multiplier would be 18. Considering the above, gross compensation comes at Rs. 6,80,400/- and further adding general damage at Rs. 30,000/- the net compensation comes at Rs. 7,10,400/-.

However, since the claimants already received Rs. 4,96,447/- as per impugned award. They are entitled to get further sum of Rs. 2,13,953/-. This enhanced awarded sum will bear interest @ 6% per annum from the date of filing the claim petition i.e. till the date of payment by the Insurance Company.

Respondent Insurance Company would make the said enhanced sum with interest to the Claimant/ Appellant no.2 being the mother only being the Class –I heir in the deceased boy within 45 days from the date of receipt of the Bank particulars of the claimant mother as would be furnished by the counsel of the Claimant to the Respondent Insurance Company along with website copy of this order.

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.)