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(Via Video Conference)

F.M.A.T. 1407 of 2013

I.A. No. CAN 1 of 2016 (old No. CAN 7243 of 2016)
I.A. No. CAN 2 of 2016 (old No. CAN 7272 of 2016)

Smt. Bela Samanta & ors.
Vs.
United India Insurance Co. Ltd. & ors.

Mr. Krishanu Banik
...For the Appellants/claimants

Mr. Rajesh Singh
... For the respondent/Insurance Co.

I.A. No.2 of 2016 (old No. CAN 7272 of 2016)

This is an application for condonationn 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 stands allowed.

The application for condonation of delay is, thus, disposed of.

F.M.A.T. 1407 of 2013

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

The department is directed to register the instant appeal immediately.

This appeal is directed against the judgement and order dated 14th September, 2012 passed by the Learned

Judge, Motor Accident Claims Tribunal, Bankura in M.A.C. Case No.4 of 2012/45 of 2008 on a claim under Section 166 of Motor Vehicle Act, 1988 for the death of one 'Kalipada Samanta', a police constable, in a road accident dated June 5, 2005.

Various points have been raised by the claimants in the instant appeal challenging the quantum of compensation. It is submitted on behalf of the appellants that the consideration of monthly salary of Rs.7,045/- of the victim, held by the learned Judge was erroneous. Further, the claimants were not granted any amount under 'future prospect'. The appellants challenged the adjustment of Rs.2,00,000/- received by the claimants as death compensation from the S.P., Bankura from the total assessment of compensation amount. Lastly, the claimants pleaded that they were erroneously given only Rs.10,000/- instead of Rs.70,000/- under the different heads of 'general damages'. Accordingly, it was argued that a lesser quantum of compensation has been wrongfully awarded by the Tribunal.

Per contra, the learned Advocate representing the Insurance Company argues that the award is just and reasonable and there is no further scope of enhancement of the same.

In order to prove the salary of the deceased, the claimants had furnished the victim's salary certificate for the month of May, 2005 as exhibit 'A'. The said exhibit reflects that the deceased was drawing a gross salary of Rs.9,170/ and after deduction of Rs.110/- as professional tax, his net pay was Rs.9,060/- per month. Learned Tribunal committed error by deducting the victim's contribution of G.P. Fund and G.I. from the salary to decide the net pay at Rs.7,045/- per month. Relying upon the judgements 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,** the appellants are justified in praying for 15% addition on account of 'future prospect' on the income of the deceased. The claimants would also be entitled to Rs.70,000/- under collective heads of general damages. On the issue of death compensation of Rs.2,00,000/- received by the claimants being adjusted against the final compensation amount, the parties have cited the judgements of **Reliance General Insurance Company Ltd. Vs. Shashi Sharma & ors.,** reported in **(2017) I SBLC (SC) 425** and **Sebestiani Lakra & ors. Vs. National Insurance Company Limited & anr.,** reported in **III (2019) ACC 864 (SC)** in support of their respective contentions. Such payment was given to the claimants by S.P. Bankura, as death compensation. There is nothing on record to show whether the payment was made under Service Rules or it had to be adjusted against any other compensation receivable. At this stage, Mr.

Banik, learned Counsel appearing on behalf of the appellants/claimants on instructions submits that his clients are ready and willing to forego Rs.1,00,000/- from the said amount.

Accordingly, taking note of such submission and considering that it is more than 16 years since accident took place, I accept such concession of the appellants for the ends of justice. Therefore, the impugned award is modified and recalculated in the manner referred hereinafter.

Particulars	**Amount (Rs.)**
Monthly Income	Rs.9,060/-
Annual Income	Rs.1,08,720/-
Less 1/3rd for personal expenses (Rs.36,240/-)	Rs.72,480/-
Add 15% future prospect (Rs.10,872/-)	Rs.83,352/-
Multiplier '11'	Rs.9,16,872/-
Add 'General Damages'	Rs.70,000/-
TOTAL Principal Compensation	Rs.9,86,872/-
Adjusted – received from S.P. Bankura (Rs.1,00,000/-)	Rs.8,86,872/-
LESS – awarded by Tribunal and paid by insurer	Rs.4,30,000/-
BALANCE (enhancement)	Rs.4,56,872/-\

The claimants acknowledge receipt of the awarded amount of Rs.4,30,000/- in terms of the direction of the learned tribunal. Accordingly, the balance enhanced sum of Rs.4,56,872/- would become payable to the appellants by the Insurance Company together with interest assessed at the rate of 6% p.a. 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 particulars of the appellants. Learned Advocate for the appellants will forward the bank account details of the appellants within a fortnight from date to the learned Advocate for the Insurance Company. The payment shall be made in the proportion 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 concerned Department 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.)