21.02.2022
Item No.13
Ct. No.7
CHC
(disposed of)

**F.M.A.T.508 of 2020**
**IA NO: CAN/1/2021**
**(Physical Hearing)**

**Smt. Anita Singha & ors.**
**Vs.**
**The United India Insurance Company Limited & anr.**

Mr. Subir Banerjee,
Mr. Sandip Bandyopadhyay,
Mrs. Ruxmini Basu Roy
...for the appellants/claimants

Mr. Sanjoy Paul
...for the respondent no.1/ Insurance Company

**In Re: CAN 1 of 2021**

The present CAN application is relatable to a prayer for condonation of delay.

Learned advocate for the appellants has attempted to explain the delay caused in preferring the appeal thereby explaining the delay in the relevant averments of application.

Mr. Sanjoy Paul, learned advocate representing the respondent no.1/Insurance Company submits that there has been delay caused in preferring the appeal, which must be taken in view, while considering the prayer for condonation of delay.

Upon perusal of the relevant averments contained in the instant CAN application, it appears that appellants were prevented by sufficient causes from preferring the appeal within the statutory period of limitation. The delay being sufficiently explained, the delay caused in preferring the appeal stands condoned.

Accordingly, the application for condonation of delay being C.A.N.1 of 2021 stands disposed of.

**In Re: <u>F.M.A.T.508 of 2020</u>**

Learned advocates for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go by to the technicalities involved in the process.

It is submitted by the learned advocate for the appellants/claimants that since the appellants/claimants have been suffering from financial distress for want of sufficiency of money for their sustenance, the appeal may be disposed of on the basis of materials furnished by both the parties to this case, which is not opposed by the learned advocate representing the Insurance Company/respondent no.1.

When learned advocate for both the parties are agreeable to the expeditious disposal of the instant appeal, the Court should not stand in the way.

The appeal has emerged out against the judgement and award dated 25.11.2019, passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District and Sessions Judge, Fast Track Court, Raiganj in M.A.C. Case No.199 of 2017, on a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of one 44 years old 'Dabu Singha', a green vegetables seller with an earning of Rs.6,000/- per month, in a road accident on 27.10.2017.

The appeal is basically on a solitary point for not extending the future prospects while doing quantification of the award.

Mr. Subir Banerjee, learned advocate representing the appellants/claimants in support of this appeal, submits that the learned Tribunal has committed an error in law in not granting any amount towards 'future prospect', since the deceased was 44 years old, and a self employed person. Accordingly, it is argued that the quantum of compensation, as has been awarded by the learned Tribunal, is inadequate.

Mr. Sanjoy Paul, learned advocate representing the Insurance Company/respondent no.1 without disputing with the facts leading to the death of deceased submits that the award has been rightly decided by learned Tribunal upon considering pros and cons of the case.

Mr. Sanjoy Paul further submits that the learned Tribunal ought to have granted Rs.70,000/- under the full component of general damages, instead of Rs.1,30,000/-.

Having considered the submission of both sides as well as the proposition of law laid down by the Apex Court in ***Smt. Sarla Verma & ors. vs. Delhi Transport Corporation & anr.*** reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Limited vs. Pranay Sethi and ors.*** reported in ***(2017) 16 SCC 680,*** this Court is of the view that there is substance in the arguments of appellants. Appellants/claimants are justified in praying for 25% addition on account of 'future prospect' on the income of the deceased, which could not be granted by the learned Tribunal.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinabove:-

| **Particulars** | **Amount (Rs.)** |
|---|---|
| Monthly Income<br>Annual Income | Rs.5,000/-<br>X 12<br>Rs.60,000/- |
| Add: Future Prospect<br>@ 25% | Rs.15,000/- |

| | |
|---|---|
| | Rs.75,000/- |
| Less: Deduction 1/4$^{th}$ for personal expenses | Rs.18,750/- |
| | Rs.56,250/- |
| Multiplier 14 | X 14 |
| | Rs.7,87,500/- |
| Add: General Damages | Rs.70,000/- |
| | Rs.8,57,500/- |
| Less: Award of learned Tribunal | Rs.7,60,000/- |
| Balance enhanced amount | **Rs.97,500/** |

The claimants acknowledge the receipt of the awarded amount of Rs.7,60,000/- with interest in terms of the direction of the learned Tribunal. Accordingly, the balance enhanced sum of Rs.97,500/- would become payable to the appellants/claimants by the Insurance Company/respondent no.1, together with interest assessed at the rate of 6% per annum on and from the date of filing of the claim petitioner i.e. from 06.12.2017 within a period of 45 days from the date of receipt of the bank account particulars of the appellants.

Learned advocate for the appellants/claimants will forward the bank account details of the appellants within a fortnight from date to the learned advocate for the Insurance Company/respondent no.1. The payment shall be made to the claimants bank accounts directly in equal proportion, as already decided by learned Tribunal.

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 shall be no order as to costs.

L.C.R., if any, may be returned back to the court below, if received in the meantime.

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

**(Subhasis Dasgupta, J.)**