
(2020) 02 SIK CK 0005
In the Sikkim High Court
Case No : Mac. App. No. 14 Of 2019

Branch Manager, National Insurance Co. Ltd	APPELLANT
Vs	
Sancha Kumari Rai And Others	RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Citation : (2020) 02 SIK CK 0005

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Sushant Subba, Madan Kumar Sundas, K.B. Chettri, N.T. Sherpa, Sabina Gurung

Final Decision : Disposed Of

Judgement

1. The only challenge in the instant Appeal is to the deduction of one-third of the amount towards personal and living expenses of the deceased, which would have been incurred by him had he been alive. The facts are not disputed.
2. Heard learned Counsel for the parties.
3. It is the contention of learned Counsel for the Appellant that in fact 50% ought to have been deducted for the aforesaid reasons as the victim was a bachelor at the time of the accident, instead of which only one-third was deducted towards the said purpose resulting in an erroneous computation of compensation.
4. Learned Counsel for the Respondents concede that there has been an error in the calculation of the quantum of compensation awarded to the Respondents inasmuch as the deduction ought to have been 50% towards the personal and living expenses of the deceased.
5. Considered submissions.
6. In Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another¹ the Hon'ble Supreme Court held as follows;

"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father." (Emphasis supplied)

Hence, the deduction for personal and living expenses of the deceased who was admittedly a bachelor ought to have been 50% instead of one-third as computed by the learned Tribunal.

7. It may be pertinent to point out that on perusal of the impugned Judgment the learned Tribunal appears to have excluded computing loss of Filial consortium. The Respondents No.1 and 2 are admittedly the mother and brother of the deceased. In terms of the decision in Magma General Insurance Co. Ltd. vs. Nanu Ram and Ors.², they would be entitled to Filial consortium. The Hon'ble Supreme Court in the said ratio held as follows;

"8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium. ..." (Emphasis supplied)

It goes without reiteration that compensation awarded is required to be "just." Hence, Filial compensation in all fairness has to be computed into the quantum of compensation.

8. Consequently, in light of the aforesaid facts and circumstances, the Judgment of the learned trial Court stands modified to the extent below;

Annual Income of the deceased (Rs.8000x12) Rs.96,000.00

Add 40% of Rs.96,000/- as future prospects Rs.38,400.00 Yearly income of the deceased Rs.1,34,400.00

Less 50% of Rs.1,34,400.00 Rs.67,200.00 [deducted from the said amount in consideration of the instances which the victim would have incurred towards maintenance had he been alive.]

Net yearly income Rs.67,200.00

Multiplier of '18' adopted in terms of Sarla Verma's case (Rs.67,200 x 18) Rs.12,09,600.00

Add Loss of Filial consortium [Rs.40,000/- each, Rs.80,000.00 payable to Respondents No. 1 and 2, respectively]

Add Funeral expenses Rs.15,000.00

Add Loss of estate Rs.15,000.00

Total Rs.13,19,600.00

(Rupees thirteen lakhs, nineteen thousand and six hundred) only.

9. Appeal allowed to the extent above.

10. The Respondents No.1 and 2 shall be entitled to simple interest @ 9% per annum on the above amount, with effect from the date of filing of the Claim Petition before the learned Tribunal till full realisation.

11. The awarded amount shall be paid to the Respondents No.1 and 2 within one month from today by the Appellant, failing which, the Appellant shall pay simple interest @ 12% from the date of filing of the Claim Petition till realisation, duly deducting the amounts, if any, already paid by it to the Respondents No.1 and 2.

12. MAC App. No.14 of 2019 stands disposed of accordingly.

13. No order as to costs.

14. Copy of this Judgment be sent to the learned Tribunal for information.

15. Records of the learned Tribunal be remitted forthwith.