

(2019) 01 OHC CK 0029
In the Orissa High Court
Case No : MACA No. 691 Of 2016

Jogendranath Sahoo And Another

APPELLANT

Vs

Binapani Senapati And Another

RESPONDENT

Date of Decision : 25-01-2019

Acts Referred:

Motor Vehicle Act, 1988 — Section 166

Citation : (2019) 1 TAC 956 : (2019) 196 AIC (Sum 16) 7 : (2019) ACJ 2364

Hon'ble Judges : A.K. Rath, J

Bench : Single Bench

Advocate : D.C. Dey, S. Satpathy

Final Decision : Allowed

Judgement

,

A.K. Rath, J",

1. This appeal challenges the award dated 26.03.2016 passed by the learned 3rd Additional District Judge-cum-4th MACT, Cuttack in M.A.C. No. 86",

of 2012/242 of 2014, whereby and whereunder the learned Tribunal awarded an amount of Rs. 6,40,000/- with 6% interest per annum to the",

claimants-appellants and directed the insurer to pay the same.,

2. The appellants as claimants filed an application for compensation under Section 166 of the Motor Vehicle Act, 1988 before the learned Tribunal.",

The case of the claimants was that on 10.09.2011 their daughter, Sonalin Sahoo was travelling with her friend in a Scooty bearing Registration No.",

OR-02-AR-6158 as a pillion rider on the left side of the road. Near IMFA office between Rasulgarh to Laxmisagar, at about 2.00 P.M., a truck",

bearing Registration No. OR-04-H-6755 being driven in a rash and negligent

manner dashed against the Scooty, as a result of which she sustained",
grievous bleeding injuries. Immediately she was taken to Capital Hospital and thereafter to Ayush Hospital, where she succumbed to injuries. The",
claimant no. 1 had filed an F.I.R. in Sahidnagar P.S., whereafter Sahidnagar P.S. Case No. 257 of 2011 was registered. According to claimants, the",
deceased was a brilliant student having a bright future. She was working as an Assistant Accountant in Kalpana Construction and Infrastructure (P),
Ltd., Bhubaneswar. She was also a Tuition Master and earning Rs. 10,000/- per month. She was 19 years old at the time of her accident.",
3. Pursuant to issuance of notice, opposite party no. 1-owner of the offending vehicle entered appearance and filed written statement pleading, inter",
alia, that the vehicle was insured with the Reliance General Insurance Co. Ltd. The same was valid from 23.06.2011 to 22.06.2012. Opposite party",
no. 2, insurer of the vehicle also filed written statement denying its liability. It was stated that the driver of the offending vehicle did not have a valid",
and effective driving licence at the time of the accident. Vehicle had no permit to ply on the road and as such the insurer is exonerated from its,
liability.,
4. Stemming on the pleadings of the parties, learned Tribunal struck five issues. To substantiate the case, the claimants had examined four witnesses",
and on their behalf, 22 documents had been exhibited. Neither any witness had been examined by the opposite parties, nor any document had been",
exhibited. The Managing Director of Kalpana Construction and Infrastructure (P) Ltd., Bhubaneswar was examined as P.W.3. He deposed that",
Sonalin Sahoo was working under him in the post of Assistant Accountant for four months prior to the date of her accident. Her monthly salary was,
Rs. 10,000/-. The salary certificate filed by him had been marked vide Ext.18. Learned Tribunal disbelieved the statement of P.W.3 and came to hold",
that the reasonable monthly income of the deceased should be Rs. 5,000/-. The deceased was a spinster. It deducted 50% of her deemed income",
towards her personal expenses and directed the insurer to pay an amount of Rs. 6,40,000/- with 6% interest. Felt aggrieved, the claimants filed this",
appeal.,
5. Mr. Dey, learned counsel for the claimants submits that the Managing Director of Kalpana Construction and Infrastructure (P) Ltd., Bhubaneswar",

was examined as witness. He deposed that the deceased was working under him in the post of Assistant Accountant for four months prior to the date,

of her accident. She was getting a monthly salary of Rs. 10,000/-. The salary certificate had been exhibited vide Ext.18. Learned Tribunal has not",

awarded any amount towards future prospects.,

6. Per contra, Mr. Satpathy, learned counsel for respondent no. 2 submits that the learned Tribunal has assigned the reasons while discarding the",

evidence of P.W.3. On assessment of evidence on record, learned Tribunal came to hold that the insurer challenged the employment so also the",

income of the deceased at the time of her death. Neither the payment register, nor any other documents showing payment of the salary of the",

deceased had been filed before the learned Tribunal. Rightly, learned Tribunal disbelieved the same. The deceased was not a self employed person.",

The compensation is just and proper.,

7. In course of hearing, the Managing Director of Kalpana Construction and Infrastructure (P) Ltd., Bhubaneswar was examined as P.W.3. He",

deposed that Sonalin Sahoo was working under him in the post of Assistant Accountant. She was getting Rs. 10,000/- per month. The salary",

certificate had been exhibited vide Ext.18. Neither any application was filed by the owner, nor the insurer to call for any other document from the",

employer of the deceased. There is no reason to disbelieve or discard the testimony of P.W.3 on flimsy ground. The deceased was 20 years old at the,

time of her accident. If the income of deceased is taken as Rs. 10,000/- per month, then 50% can be deducted towards personal expenses. The",

appropriate multiplier is 18.,

8. In Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram, 2018 SCC OnLine SC 1546, the apex Court held that:",

"8.6 The Motor Vehicles Act is a beneficial and welfare legislation. The Court is duty-bound and entitled to award just compensation",

irrespective of whether any plea in that behalf was raised by the claimant",

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.â??,

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.",

â?|â?|â?|â?|,

Parental consortium is granted to the child upon the premature death of a parent, for loss of â??parental aid, protection, affection, society, discipline,"

guidance and training.â??,

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 worldover have,

recognised 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.",

Head,Compensation awarded

i. Income:

ii. Future Prospects:

iii. Deduction towards personal

expenditure:

iv. Total income:

v. Multiplier:

vi. Loss of future income:

vii. Loss of Filial Consortium:

Total compensation awarded:"Rs. 10,000/-

Rs. 4,000/- (i.e. 40% of the income)

Rs. 5,000 [i.e. 50% of Rs. 10,000/-+Rs. 4,000/-)

Rs. 7,000/- (50% of Rs. 10,000/-+ Rs. 4,000/-)

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Rs. 15,12,000/- (Rs. 7,000 ₹— 12 ₹— 18)

Rs. 80,000/- (Rs. 40,000 ₹— 2)

Rs. 15,92,000/- along with interest @ 6% per annum from the date of filing of the claim petition till

payment.