

(2019) 02 PAT CK 0031

In the Patna High Court

Case No : Miscellaneous Appeal No. 364 Of 2014

Ram Sakhi Devi

APPELLANT

Vs

Amar Kishore Singh

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 166

Citation : (2020) 1 PLJR 465

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Alok Kumar, Sharda Nand Mishra, D.K. Gupta, Deepak Kumar, A. Priyadarshi

Final Decision : Disposed Off

Judgement

1. The appeal is barred by limitation of four months and twenty days. The delay is explained in a petition filed under Section 5 of the Limitation Act vide I.A. No.6681 of 2015. Hence, the delay is condoned.

2. Heard learned counsel for the parties.

The appellant is not satisfied with the quantum of award amount allowed by the Tribunal vide impugned order dated 12.09.2013 passed in Claim Case No.45 of 2001 under Section 166 of the Motor Vehicles Act, 1988. By the impugned order the Tribunal has awarded Rs.2,79,320/-.

3. The claimant is mother of late Pappu Kumar Singh, who was victim of motor accident. The referred truck dashed the scooter of Pappu Kumar Singh on the road from behind. The claimant had submitted before the Tribunal that the deceased was running a stationery shop and he had income of Rs.3,000/- per month. In absence of material to substantiate the aforesaid income the Court-below took Rs.89/- as per day wage of an unskilled daily wager.

4. Learned counsel for the appellant submits that there was no rebuttal of the

aforesaid statement of the appellant. Moreover, even if the deceased was not earning anything, by judicial pronouncements Rs.100/- per day has been taken for calculating the compensation.

5. Thus, the monthly income of the deceased would be Rs.3,000/- and if the aforesaid amount is multiplied by 12 months, the yearly income comes to Rs.36,000/-. At the time of death the deceased was aged about 30 years and was a self employed. Hence, 40% addition of the established income is warranted as held in National Insurance Company Limited V. Pranay Setthi reported in 2017 (4) PLJR 261. The appropriate multiplier would be of 17 and not of 16 as held by the Tribunal. If the amount is multiplied with 17 the total comes to Rs.8,56,800/-. Out of the aforesaid, 50% is deductible for the personal expenses of the deceased as he was a bachelor, as per guidelines given in Sarla Verma and Others Vs. Delhi Transport Corporation and Another reported in (2009) 6 SCC 121. Besides the aforesaid the claimant would be entitled for Rs.15,000/- in Funeral expenses head, Rs.15,000/- for loss of estate as well as Rs.40,000/- for loss of consortium. Loss of consortium is awardable in view of the judgment of the Supreme Court in Magma General Insurance Co. Ltd. V. Nanu Ram @ Chuhru Ram & Others reported in 2018 (4) PLJR 229. In para-8.7 of Megma General Insurance Co. Ltd. the supreme Court observed 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, cooperation, 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 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 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 count⁵. 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."

6. In Magma General Insurance Co. Ltd. Case the father, brother and sister of the deceased had filed claim petition under Section 166 of the Motor Vehicles Act, 1988. In the present case the mother of the deceased is the claimant.

7. The total compensation payable to the claimant in terms of the judgment in Pranay Sethi (supra) is computed below:

? Income: Rs.3,000/- per month

? Percentage increase towards future prospects: 40%

? $\text{Rs.3000/-} \times 40\% = 1,200/-$

? Total income: Rs.4,200/-

? 50% deduction : 2,100/-

? Income after deduction: Rs.2,100/-

? Annual Income = $\text{Rs.2,100/-} \times 12 = \text{Rs.25,200/-}$

? Multiplier Applied: 17 (since age of deceased was 30 years)

? Loss of dependency: $\text{Rs.25,200/-} \times 17 = \text{Rs.4,28,400/-}$

? Loss of consortium: Rs.40,000/-

? Loss of estate: Rs.15,000/-

? Funeral expenses: Rs.15,000/-

? Total compensation: 4,98,400/-

8. The Tribunal has not awarded any interest on the claim amount. Hence, it is ordered that an interest of 8% per annum would be payable from the date of application till realization of the amount. The already paid amount, if any, shall be deducted from the final payment.
9. With the aforesaid modification in the impugned order, this appeal is disposed of.