



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * *

M.A.C.M.A. No.3740 OF 2005

Between:

1. Pagadala Subrahmanyam, S/o.P.Chengappa
and another

... Petitioners

AND

Sri M.R.Ravi Kumar, S/o.M.Ramaiah
and another

... Respondents

Date of order : 01.4.2021

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

1. Whether Reporters of Local Newspapers
may be allowed to see the order : YES / NO
2. Whether the copy of order may be marked
to Law Reporters/Journals : YES / NO
3. Whether His Lordship wish to see the fair
copy of the order? : YES / NO

NINALA JAYASURYA, J



*** THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

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... Respondents

! Counsel for the petitioners : Sri Md.Saleem

^ Counsel for the R.1 : ----

Counsel for the R.2 : Sri N.S.Bhaskar Rao

< Gist:

> Head Note :

? Cases Referred:

1. (2017) 16 SCC 680
2. (2018) 18 SCC 130

**THE HON'BLE SRI JUSTICE NINALA JAYASURYA****M.A.C.M.A. No.3740 OF 2005****ORDER:**

Heard learned counsel for the appellants/claimants. No representation on behalf of the respondents.

2. This is an appeal preferred by the claimants against the order dated 11.10.2004 partly allowing M.V.O.P. No.165 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge (Fast Track Court), Madanapalle.

3. The appellants filed the said O.P., seeking a compensation of Rs.1,00,000/- together with interest at the rate of 12% per annum for the death of their son, who died on 09.2.2001 pursuant to an accident that occurred on 08.2.2001. In the said O.P., they averred that while their son/Thulasiram and daughter were playing in front of a Temple, a Scooter bearing No.AP 03D 7380 driven by its driver in a rash and negligent manner hit their son due to which he sustained injuries on the head and all over the body. They averred that he was immediately shifted to the Government Hospital, Punganur and was referred to S.V.R.R. Hospital, Tirupati for better treatment, but he succumbed to the injuries on 09.2.2001. The deceased was a minor boy aged about four years. In support of their claim, the claimants examined P.Ws.1 and 2 and got marked Exs.A.1 to A.3.

4. On behalf of the Insurance Company, a written statement was filed denying the averments made in the O.P., and that the Insurance Company is not liable to pay any compensation. On



behalf of the Insurance Company, R.W.1 was examined and Exs.B.1 to B3 were marked.

5. After considering the material on record and rejecting the contentions advanced on behalf of the Insurance Company, the Tribunal taking the age of the deceased as three years in the light of Exs.A.1 to A.3 awarded a lump sum amount of Rs.50,000/- for the death of minor boy, Rs.10,000/- towards pain and suffering, loss of affection, Rs.1,000/- towards transportation and Rs.2,000/- towards funeral expenses. In all the Tribunal awarded an amount of Rs.63,000/- together with interest at the rate of 9% per annum as against the total claim of Rs.1,00,000/-. Aggrieved by the said order and decree in allowing the claim partly, the present appeal is preferred.

6. Learned counsel for the appellants *inter alia* contends that the order of the Tribunal in not allowing the O.P., in toto is not just and further that the Tribunal erred in not taking the age of the deceased's mother while determining the compensation. He further submits that in fact the appellants/claimants are entitled for more compensation, however only Rs.1,00,000/- was claimed and this Court has ample power to award just and reasonable compensation.

7. Perused the material on record and considered the submissions made by learned counsel for the appellants. Considering the material on record to the effect that the deceased was a minor boy of three years old and taking into consideration the relevant aspects the Tribunal has awarded an amount of



Rs.50,000/-. Further the Tribunal has awarded only Rs.10,000/- towards pain and suffering and Rs.1,000/- towards loss of affection which according to this Court is not just or reasonable. In view of the expression of the Hon'ble Supreme Court in **National Insurance Co. Ltd., vs. Pranay Sethi**¹, this Court deems it appropriate to award the amounts under conventional heads i.e., loss of estate and funeral expenses at Rs.15,000/- each. As mentioned above, the Tribunal has awarded a sum of Rs.10,000/- towards pain and suffering and loss of affection. The Tribunal has not awarded any amount towards loss of consortium. Though compensation for loss of consortium would generally be granted to the spouse of victim, the Hon'ble Supreme Court in the case of **Magma General Insurance Company Ltd., vs. Nanu Ram alias Chuhru Ram**², after referring to the Constitution Bench judgment of the Apex Court in **Pranay Sethi's** case and different types of consortiums, granted a sum of Rs.40,000/- each to the father and sister of the deceased towards filial consortium. The relevant portion of the judgment of the Hon'ble Supreme Court with reference to Filial consortium may profitably be extracted hereunder:

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 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.

¹ (2017) 16 SCC 680

² (2018) 18 SCC 130



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 [Rajasthan High Court in **Jagmala Ram @ Jagmal Singh vs. Sohi Ram**, 2017 4 RajLW 3368 (Raj); Uttarakhand High Court in **Smt.Rita Rana vs. Pradeep Kumar**, 2014 (3) UC 1687; Karnataka High Court in **Lakshman vs. Susheela Chand Choudhary**, 1996 (3) KarLJ 570 (DB)]. 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**.

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.

8. In the present case, this Court is of the considered view that the appellants/claimants who lost their son at a tender age of 3 years have certainly lost his love, affection and companionship and therefore, in the light of the judgment of the Hon'ble Supreme Court referred to above, they are entitled for compensation towards loss of Filial Consortium. Accordingly, they are awarded Rs.40,000/- each. Accordingly the order and decree of the Claims Tribunal is modified and the following amounts are granted towards compensation.

S.No.	Head	Amount
1.	No fault liability	50,000
2.	Loss of estate	15,000
3.	Loss of Filial consortium	80,000
4.	Funeral expenses	15,000
5.	Transportation charges	2,000
	Total	1,62,000



9. The amounts as awarded shall carry interest at the rate of 9% per annum from the date of filing of the Original Petition till the date of deposit. The amounts as awarded shall be deposited by the second respondent/Insurance Company within a period of two months from the date of receipt of a copy of this order and is entitled to recover the same from the first respondent in terms of the decree of the Tribunal. Further, on deposit of the amount by the Insurance Company, the appellants/claimants are entitled to withdraw the same equally subject to payment of the remaining Court Fee on the enhanced amount of compensation than claimed by them.

10. Accordingly, the appeal is allowed with proportionate costs. Miscellaneous applications, if any, pending in this appeal shall stand closed.

April 01, 2021.
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NINALA JAYASURYA, J