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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 05.07.2019*

\+ **<u>MAC.APP. 637/2019, CM APPLs. 27996-97/2019</u>**

THE ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. A.K. Soni, Adv.

versus

KIRAN DEVI & ORS. ..... Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>NAJMI WAZIRI, J (Oral)</u>

1. In this case the appellant impugns an award of compensation on the ground that two documents have been produced by the claimants apropos the age of the victim. As per the voter identity card, his age would be 53 years; whereas as per the document issued by the UIDAI, it would be 56 years and the corresponding multipliers would be 9 & 11 respectively. It is the appellant's case that the investigations have been carried out apropos both the cards and they were found to be validly issued. It is the appellant's case that the card issued by UIDAI should be taken into consideration because it specifically mentions his date of birth whereas the electoral card does not do so. The UIDAI card mentions his date of birth as 01.01.1961 which fixes his age as 56 years. Accordingly, this card would be applicable as it is more precise apropos his date of birth. In the circumstances, the multiplier of 9 would be applicable for compensation of loss of dependency.

Therefore, the insurance company would recalculate the loss of dependency and pay the recalculate amount to the respondent, in terms of the scheme of disbursement.

2. However, at this stage, the Court would note that the impugned order has not awarded any compensation for loss of filial consortium to the claimants. The claimants are the widow and six children of the deceased. The loss of consortium has been awarded only to the widow Smt. Kiran Devi. The children too would be entitled to receipt of compensation for loss of filial consortium as has been elaborately held by the Supreme Court in ***Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*** The Supreme Court has held inter alia:

> *"A Constitution Bench of this Court in Pranay Sethi*[1] *dealt with the various heads under which compensation is to be awarded in death case. One of these heads is Loss of Consortium.*
>
> *In legal parlance·, "consortium" is a compendious term which encompasses 'spousal consortium', and 'parental consortium and filial consortium'.*
>
> *The right to consortium would include the company date, 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 allowed 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,*

[1] ***National Insurance Co. vs. Pranay Sethi, (2017) 16 SCC 680***

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 low, 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."

3. Accordingly, each of the children will be entitled to compensation for loss of filial consortium @ Rs.40,000/-. Let the said amount be paid by the appellant to the children.

4. The appeal is disposed off in the above terms.

5. The statutory amount of Rs.25,000/- be returned to the appellant along with interest accrued thereon, if any.

NAJMI WAZIRI, J

MAY 09, 2019/acm