

Bridget vs Vinod

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Court : Kerala

Decided On : Mar-27-2024

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : RP/522/2023

Appellant : Bridget

Respondent : VINOD

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946 RP
NO. 522 OF 2023 AGAINST THE ORDER/JUDGMENT DATED 17.03.2023 IN
MACA NO.1599 OF 2013 OF HIGH COURT OF KERALA REVIEW
PETITIONERS/APPELLANTS: 1 BRIDGET AGED 76 YEARS W/O.THOMAS,
VALLITHANAM HOUSE, KAINAKARY, ALAPUZHA - 688 501. 2 MARIAMMA
THOMAS AGED 55 YEARS 3 MINI THOMAS AGED 50 YEARS 4 MANJU
THOMAS AGED 46 YEARS 5 METTY THOMAS AGED 42 YEARS R.P No.522 of
2023 2 6 MERRY THOMAS AGED 42 YEARS KAINAKARY KARA &
VILLAGE, 7 MERLY THOMAS AGED 41 YEARS BY ADV MATHEW JOHN (K)
RESPONDENTS/RESPONDENTS: 1 VINOD S/O NARAYANAN, HOUSE NO

T.C. 11/245, KARTHIKA HOUSE, NEAR VELLAYAMABALAM JUNCTION, NANDANCODE, KAVADIYAR VILLAGE, TRIVANDRUM 695003., PIN - 2 THE NATIONAL INSURANCE COMPANY LTD., REPRESENTED BY ITS MANAGER, PALA BRANCH - 686 575., PIN - 686575 BY ADV SARAH SALVY THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 26.03.2024, THE COURT ON 27.03.2024 DELIVERED THE FOLLOWING: R.P No.522 of 2023 3

ORDER

The appellants in MACA No.1599 of 2013 are seeking review of the appeal judgment, alleging that it is vitiated by an error apparent on the face of the record.

2. The petitioners (appellants 2 to 8) are the legal heirs of the

deceased 1st appellant. As per the appeal judgment, petitioners 2 to 7 (appellants 3 to 8) were awarded Rs.10,000/- each towards loss of love and affection, whereas the 1st petitioner-wife was awarded Rs.40,000/- towards loss of consortium. The case of the petitioners is that, as per the decision of the Apex Court in Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram [2018 (3) KLT Online 3095 (SC)], irrespective of the age of the petitioners, they were entitled to get compensation under the head filial consortium. Since that amount was not awarded, the judgment is vitiated, and hence to be reviewed.

3. Heard learned counsel for the petitioners and learned counsel for the 2nd respondent-Insurance Company.

4. First of all, the petition for review on the ground that filial consortium was not granted to the petitioners, is not correct. When compensation is claimed for the premature death of a parent, the R.P No.522 of 2023 4 consortium to be claimed is parental consortium and not filial consortium. Filial consortium is the right of the parents to get compensation in case of accidental death of their children.

5. That apart, petitioners 2 to 7 are the children of deceased

Thomas, all aged between 41 to 55 years, even going by their petition. The 1st petitioner-wife alone was found to be the dependent of the deceased. In paragraph

10 of the appeal judgment, this Court found that, as far as love and affection of a father is concerned, the children despite they being matured, married or age old, as they lost the love of their father forever, Rs.10,000/- each was awarded to petitioners 2 to 7 (appellants 3 to 8) for loss of love and affection.

6. Now the claim of the petitioners is that, each petitioner is entitled to get Rs.40,000/- each under the head loss of consortium as per the decision Magma General Insurance Co. cited supra.

7. In the decision Magma General Insurance Co., relying on the Constitution Bench decision National Insurance Company Ltd. vs. Pranay Sethi and Others [(2017) 16 SCC 680], the Apex Court

held that, 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, R.P No.522 of 2023 5 care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. 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.

8. In the decision Magma General Insurance Co. cited supra

and also in United India Insurance Co. Ltd v. Satinder Kaur @ Satwinder Kaur and others (2020 (3) KHC 760 : 2020 ACJ 2131), the word child used by the Apex Court clearly indicates that, only a minor child is entitled to parental consortium, as that compensation is awarded for loss of parental aid, protection, affection, society, discipline, guidance and training. As far as children who are major and married and who are not dependent on their parents, we cannot say that they are entitled for parental consortium.

9. Learned counsel for the petitioners relied on a Single Bench

decision of this Court in New India Assurance Co. Ltd v. Gopinathan (2023 (2) KLT 368) in which it was held that, when consortium becomes payable to children, it does not mean that, it will be only eligible to a girl or boy under the age of 14, but even to a person much beyond that age, if the premature death of his/her father/mother is on account of a road traffic accident. In that decision,

R.P No.522 of 2023 6 the learned Single Judge upheld the compensation granted by the Tribunal to the claimants under the head loss of love and affection

stating that, it should have been titled as loss of consortium. But, going by the Apex Court decisions Pranay Sethi and Magma General Insurance Co. cited supra, parental consortium is the consortium granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training.

10. In the case on hand, the petitioners, though they were mature and independent, each of them were awarded compensation of Rs.10,000/- each for loss of love and affection.

So, there is no error apparent on the face of the record, so as to review the judgment in MACA No.1599 of 2013. The review petition fails and hence dismissed. Sd/- SOPHY THOMAS JUDGE smp

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