

(2011) 02 CHH CK 0051
In the Chhattisgarh High Court
Case No : M.A. No. 888 of 2009

Janak Bai Satnami and Another

APPELLANT

Vs

Bhanuprasad Manikpuri and Others

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Hindu Marriage Act, 1955 — Section 11, 12, 16
Motor Vehicles Act, 1988 — Section 165, 166

Citation : (2012) ACJ 2322

Hon'ble Judges : Prashant Kumar Mishra, J; I.M. Quddusi, J

Bench : Full Bench

Advocate : Ashok Soni, for the Appellant; Shaktiraj Sinha and Mr. Deepak Gupta, for the Respondent

Judgement

I.M. Quddusi, J.—These are two appeals filed against the impugned award dated 11.9.2008 of the Additional Motor Accidents Claims Tribunal, Bhatapara, Camp Court, Balodabazar, District Raipur (C.G.) passed in two Claim Case Nos. 44 and 45 of 2007. The brief facts of the case are that on 25.8.2006 at about 9.15 a.m. deceased Birjhu Satnami was selling fruits on his thela in front of bus stand Simga, at that time a truck bearing registration number UP 66-D 9188 coming from Bilaspur direction being driven rashly and negligently by the non-applicant No. 1 dashed the standing jeep No. CG 08-ZD 0284, then dashed the thela of the deceased Birjhu Satnami along with cycle rider Shricharan Yadav due to which Mohammad Intaf sitting in the jeep, Nazu Ali who was cleaning the glass of jeep, Birjhu Satnami and Shricharan Yadav received grievous injuries. Due to grievous injuries, Birjhu Satnami and Nazu Ali died on the spot. Deceased Birjhu Satnami was aged about 22 years and he was working as labourer and used to earn Rs. 4,500 per month. The claimants have claimed compensation of Rs. 7,50,000.

2. Claim Case No. 44 of 2007 was filed by Janak Bai Satnami showing herself as the widow of the deceased Birjhu Satnami as well as on behalf of her minor son who was aged about 1 month at the time of filing the claim petition, namely,

Satish s/o Birjhu Satnami, under her guardianship. The other Claim Case No. 45 of 2007 was filed by the widowed mother of the deceased along with his 10-year-old minor brother Dhansingh and 6-year-old minor sister, namely, Dhanmat.

3. In that claim case, i.e., 45 of 2007 a dispute was raised on behalf of widowed mother of the deceased that the appellant Janak Bai Satnami was not married to her son, i.e., deceased Birjhu Satnami.

4. The learned Tribunal has given the finding that Janak Bai Satnami was not a legally wedded wife of the deceased and dismissed her claim petition (Claim Case No. 44 of 2007) and allowed the claim petition filed by the mother, brother and sister of the deceased, i.e., Claim Case No. 45 of 2007 and awarded Rs. 6,27,000 as compensation along with 6 per cent simple interest per annum from the date of filing of the claim petition till the payment of the compensation is made.

5. Being aggrieved, the instant appeal has been filed on behalf of Janak Bai Satnami, alleged widow of the deceased, and her minor son Satish s/o Birjhu Satnami.

6. We have perused the impugned award and found that no finding has been given about the legitimacy of the minor child because even if the appellant No. 1 was not found to be legally wedded wife but appellant No. 2 was born and was the son of the deceased, at least he would be an illegitimate child of the deceased and in such circumstances, it cannot be said that the claim petition was not maintainable, in view of the fact that section 166 of the Motor Vehicles Act provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made by all or any of the legal representatives of the deceased.

7. "Legal representative" has been defined in clause (11) of section 2 of the CPC as under:

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

8. With regard to the rights of an illegitimate child, section 16 of the Hindu Marriage Act provides as under:

(16) Legitimacy of children of void and voidable marriages.--(1) Notwithstanding that marriage is null and void u/s 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage u/s 12,

any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity u/s 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

9. In view of the above, if the appellant No. 2 was an illegitimate child, his claim cannot be denied.

10. Besides this, we have found that the learned Tribunal has not paid attention to the statements and cross-examination of the witnesses properly. The mother of the deceased Dular Bai, witness No. 1 of claimants of Claim Case No. 45 of 2007, has stated in her statement that she did not know whether after three months from the date of accident a son was born to his son, though, she had denied the marriage with the appellant No. 1. The statement was recorded in Hindi. The relevant part of her statement given in the cross-examination given in para 8 is quoted as below:

(Omitted as in vernacular)

11. Another witness No. 2 of the mother of the deceased, namely, Rooplal has also stated similarly that he had no knowledge about the birth of the son of Birjhu Satnami after three months from the date of accident. Witness No. 4 of the appellant No. 1, namely, Kartikram stated the fact that he was Chhadidar of Satnami Samaj of village Dogariya, whatever marriage is performed in Satnami Samaj is always performed with his consultation and permission as he was the Chhadidar. He had stated that the appellant No. 1's marriage, her elder sister's and brother's marriage all the three marriages were performed together. "Madwa" of all the three was one. The marriage of Janak Bai Satnami, appellant No. 1, was performed with Birjhu Satnami (deceased) and Birjhu Satnami gave him Rs. 80 as "dakshina" and at the time of accident minor Satish was in womb and was born after three months from the date of accident. In the cross-examination a suggestion was made on behalf of the claimants of Claim Case No. 45 of 2007, i.e., mother of the deceased and others that there was some quarrel in the sasural of Janak Bai Satnami and, therefore, she came back to her maika. He denied his suggestion and has stated that she had gone for "Jachaki", i.e., delivery purpose. Further, a suggestion was made that deceased Birjhu Satnami had gone to bring his wife. This suggestion was also denied. It is further stated by this witness that when appellant No. 1 did not come a Panchayat was held and separation was made. The said version in the cross-examination on behalf of non-applicant Nos. 4, 5 and 6, i.e., claimants of Claim Case No. 45 of 2007 is quoted

as under:

(Omitted as in vernacular)

12. In the case of Jinia Keotin and Others Vs. Kumar Sitaram Manjhi and Others, the Hon"ble Apex Court has laid down in para 4 as under:

(4) We have carefully considered the submissions of the learned counsel on either side. The Hindu Marriage Act underwent important changes by virtue of the Marriage Laws (Amendment) Act, 1976, which came into force with effect from 27.5.1976. Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of contravention of the statutory prescriptions, any child born of such marriage would have the effect, per se, or on being so declared or annulled as the case may be, of bastardizing the children born of the parties to such marriage. Polygamy, which was permissible and widely prevalent among the Hindus in the past and considered to have evil effects on society, came to be put an end to by the mandate of Parliament in enacting the Hindu Marriage Act, 1955. The legitimate status of the children which depended very much upon the marriage between their parents being valid or void, thus turned on the act of the parents over which the innocent child had no hold or control. But, for no fault of it, the innocent baby had to suffer a permanent setback in life and in the eyes of society by being treated as illegitimate. A laudable and noble act of the legislature indeed in enacting section 16 to put an end to a great social evil. At the same time, section 16 of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as the succession or the inheritance by such children is concerned, to the properties of the parents only.

13. Therefore, we are of the opinion that learned Claims Tribunal has not appreciated the evidence available on record and has given finding without discussing the same. It is also a matter for notice that the matter of legitimacy is not confined only to mother regarding accident claim, but it has far reaching effect, therefore the same should be decided fairly.

14. The Tribunal has also committed illegality in fixing the quantum as the deceased was treated as bachelor and for personal living expenses only 1/3rd has been deducted. 50 per cent should be deducted in case of a bachelor, however, in case of married person or having children/child legitimate or illegitimate the situation would be different. All these aspects have to be seen by the Tribunal afresh.

15. At this stage, learned counsel for the respondent Nos. 4, 5 and 6 has submitted that he has no objection if D.N.A. test of the child is done. Learned counsel for the appellants has also submitted that he has no objection but since we are of the opinion that the matter requires reconsideration throughout we are not deciding anything here. However, we are of the opinion that the entire

findings given by the Tribunal in the impugned award are liable to be set aside. Therefore, we allow these appeals in part, set aside the impugned award and finding given therein and remit the matter back to the Tribunal to decide the claim petition afresh.

16. Parties shall be allowed to amend the pleadings, adduce further evidence, file documents or get documents verified, etc. and thereafter the decision shall be taken afresh without being influenced by the findings given in the impugned award.

17. The parties shall appear before the Tribunal on 14.3.2011.

18. The claim petitions shall be restored to their original number for the purpose of decision afresh.

19. The LCR shall be sent back to the Tribunal without further delay.

20. A copy of this order be placed in the record of M.A. (C) Nos. 888 and 141 of 2009. No order as to costs.