

(2008) 09 KL CK 0008
In the High Court Of Kerala
Case No : M.A.C.A. No. 1324 of 2004

Jane Antony and Others

APPELLANT

Vs

V.M. Siyath and Others

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Constitution of India, 1950 — Article 32
Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1)
Divorce Act, 1869 — Section 19, 21, 57
Hindu Adoptions and Maintenance Act, 1956 — Section 2(1), 6
Hindu Marriage Act, 1955 — Section 12, 16
Motor Vehicles Act, 1988 — Section 166
Status of Children Act, 1969 — Section 3
Succession Act, 1925 — Section 33, 36, 37, 38, 39

Citation : (2009) ACJ 2272 : (2009) 1 ILR (Ker) 896

Hon'ble Judges : Nair Harun-Ul-Rashid, J; C.N. Ramachandran, J

Bench : Division Bench

Advocate : P.R. Venketesh, for the Appellant; R.D, Shenoy, K.G. Anil Babu, Cyriac Kurian and S. Vinod Bhat, for the Respondent

Judgement

Nair Harun-Ul-Rashid, J.—Right of succession of illegitimate children born to Christian parents is the bone of contention cropped up for consideration in this case. While considering this, following issues arise for consideration:

- (i) Whether the requirement of a central legislation recognising the right of illegitimate children of all classes irrespective of their religion to inherit the property of their parents is the need of the hour?
- (ii) Whether illegitimate children born to Christian father and mother are entitled to inherit the property of their father under the Indian Succession Act?
- (iii) Whether children born to parents living as husband and wife during the subsistence of the father's first marriage are legitimate or illegitimate in the eyes of law?

2. The appeal is directed against the award passed by Motor Accidents Claims Tribunal, Pala in O.P. (MV) Nos. 1073 and 1270 of 1995. The case of the appellants in brief is as follows:

The deceased Dr. Antony was a 36-year old doctor who died in a motor accident on 3.5.1993 while studying for M.S. course in the Medical College Hospital, Kottayam. The motorbike in which the deceased was travelling as pillion rider along with his relative was knocked down by a Tempo van driven by respondent No. 1. The deceased sustained injuries and was admitted in the Medical College Hospital, Kottayam where he later died. The appellant No. 1, who is also a doctor by profession is the widow of the deceased, appellant Nos. 2 and 3 are her children born to the deceased and appellant Nos. 4 and 5 are the parents of the deceased. In the claim petition filed by the appellants before the Tribunal, respondent Nos. 4 and 5 who are the children of the deceased and one Mary Antony got impleaded as additional respondents. Even though Mary Antony, RW 1, claimed to be married to the deceased and respondent Nos. 4 and 5 are the children born in that wedlock, Tribunal held that since the first marriage was subsisting there could not be another valid marriage by deceased with RW 1. However, respondent Nos. 4 and 5, the children born to the deceased through RW 1, were granted compensation along with the appellants herein. Out of the total compensation awarded, Rs. 50,000 each was given to the parents of the deceased who are appellant Nos. 4 and 5 herein and the balance was apportioned among appellant Nos. 1 to 3 and respondent Nos. 4 and 5 herein equally. It is against this award, appeal is filed for enhancement of compensation and also for cancelling the award passed in favour of respondent Nos. 4 and 5.

3. We have heard the counsel appearing for the parties and have gone through the award. According to respondent Nos. 4 and 5, Dr. O.I. Antony married their mother as per an agreement dated 23.1.1990 and they were born in that wedlock. The respondent No. 4 was born on 8.11.1990 and respondent No. 5 was born on 16.9.1993 after the death of Dr. Antony. To discharge the burden of proving that respondent Nos. 4 and 5 are the children of the deceased Antony, RWs 1 to 3 were examined. RW 1 testified that on 28.5.1989 there was an advertisement in the matrimonial columns of Indian Express inviting proposals from suitable bride for the deceased to which her mother responded. Exh. B2 is the Indian Express newspaper and Exh. B2(a) is the relevant publication. According to RW 1, she was a Lieutenant working in the Nursing Department of the Military during the relevant period and during January 1990, she met the deceased Antony at Kottayam and they decided to marry and consequently registered a document at the Sub Registry Office, Thrissur on 23.1.1990. Exh. B8 is the said marriage document. In Exh. B8, it is stipulated that they have decided to live together as husband and wife by virtue of the said agreement and that the marriage will be solemnized as per the religious formalities and customs. It is also testified by RW 1 that herself and deceased Antony lived as husband and wife at her residence at Pala for about 1 1/2 months. She deposed that she became pregnant. Later she was transferred to Binnaguari in West Bengal and

that the deceased Antony visited her thrice during that time. She also stated that both of them worked together at Pushpagiri Hospital, Kerala. The first child was born at Cochin Naval Base Hospital. RW 1 further stated that baptism of respondent No. 4 was performed on 27.12.1990 and that Exh. B10 is the baptism certificate of the respondent No. 4 issued from Uzhavoor Forane Church in which the name of the father of the child is shown as Antony and that of the mother as Mary. Exh. B11 is the birth certificate of the respondent No. 4 in which also her name and that of the deceased are shown as the parents of the child. RW 1 further deposed that when Dr. Antony died, she was pregnant and gave birth to the second child on 16.9.1993. RW 2 is the sister of RW 1. She also deposed that RW 1's marriage was performed on 23.1.1990 and she was residing with the deceased. She further stated that the deceased had been paying maintenance to RW 1. RW 3 is the home nurse who was deputed by the deceased Antony to nurse RW 1 after the birth of the first child. She deposed that she went along with deceased Antony to the residence of RW 1 and stayed there for about 10 months. According to RW 3, her remuneration was paid by deceased Antony. In the birth certificate of the second child, the name of the father is shown as Antony and that of the mother as Mary. Exh. B13 series are the photographs of deceased Antony, RW 1 and their first child taken during the birthday celebration of the first child. Exh. B14 series are the negatives of the photographs. The oral and documentary evidence would prove that respondent Nos. 4 and 5 were born to RW 1 through deceased Antony.

4. One of the questions to be considered is regarding the entitlement of compensation for the respondent Nos. 4 and 5 on account of the death of the deceased who is their father. Even though respondent Nos. 4 and 5 are the children of RW 1 in her relationship with the deceased, the case of the first wife is that there is no valid marriage between the deceased and RW 1 and, therefore, the claim is not maintainable. Counsel for respondent Nos. 4 and 5 contended that the deceased contracted marriage with RW 1 which is evidenced by Exh. B8 document and the fact that the deceased lived with RW 1 and two children were born in that relationship who are respondent Nos. 4 and 5 stands proved. The evidence of RW 1 and the documents produced by her established the fact that the deceased and herself lived together on the understanding that they will eventually get married after getting divorce from appellant No. 1. The Tribunal, based on the evidence, concluded that the case of RW 1 about her living with the deceased as his wife for some time and that she got two children, namely, respondent Nos. 4 and 5 in that relationship are true. On going through the documents and after hearing the parties, we do not find any ground to deviate from the findings of the Tribunal that though there was no valid marriage between the deceased and RW 1, they lived together for quite some time and two children were born in that relationship, namely, respondent Nos. 4 and 5.

5. The next question to be considered is whether respondent Nos. 4 and 5 though children of the deceased are entitled to get compensation as his children? Counsel for the appellants relied on the decision of this Court in Shyamalavalli

Amma v. Kavalam Jisha 2007 (3) KLT 270 and in Karthi Pankajakshy v. Lalitha Sujatha 1990 (1) KLT 248 and contended that the maintainability of the claim has to be considered only with reference to the succession law and respondent Nos. 4 and 5 being illegitimate children are not eligible to succeed to the estate of deceased Dr. Antony nor to file the claim.

6. Counsel appearing for the respondent Nos. 4 and 5 referred to the decisions of this Court and the Supreme Court which the Tribunal has relied on while passing the award and contended that the words "legal heirs" include illegitimate children also. A Division Bench of this Court in the decision in P.N. Unni and Others Vs. Baby John and Others, , held that the claim petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") is maintainable only when it is filed by the legal representatives. The Apex Court in the decision in Gujarat State Road Trans. Corporation v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC), held that a wide meaning should be given to the words "legal representative" referred to in Section 166 of the Act and in appropriate cases even foster children will be covered by the term "legal representative". We have, therefore, examined the entitlement of compensation for respondent Nos. 4 and 5 with reference to the provisions of the Indian Succession Act, 1925, which is the law of succession applicable to the appellants. Counsel for the appellants relied on Section 33(a) of the Indian Succession Act and contended that appellant No. 1 being the widow of the deceased is entitled to one-third of the compensation and the remaining is to be apportioned among the lineal descendants who are the children of the deceased born to the appellant No. 1, namely, appellant Nos. 2 and 3 herein. However, counsel for respondent Nos. 4 and 5 referred to Sections 36 and 37 of the Indian Succession Act and contended that respondent Nos. 4 and 5 being the children of the deceased are also entitled to succeed to the estate of the deceased. We are of the view that Sections 36 and 37 of the Indian Succession Act should be read with Section 33(a) and the combined effect is that one-third of the estate of the deceased have to be first allocated to the widow and the balance should be distributed among lineal descendants, namely, the children. Section 36 provides that share of estate of the deceased among lineal descendants should be in accordance with Sections 37 to 40 of the Indian Succession Act. Even though counsel for the appellants relied on Sections 57 and 21 of Indian Divorce Act, 1869 and contended that only legitimate children are entitled to succeed to the estate except in the specific case of exception u/s 21 of the said Act, counsel for respondent Nos. 4 and 5 referred to Section 8 of the Indian Succession Act and contended that illegitimate children have a recognised status under the Indian Succession Act. He also pointed out that there is nothing in the Indian Succession Act barring illegitimate children from succeeding to the estate of the deceased.

7. The word "legitimate" when used with reference to a child, means lawfully begotten, born in a wedlock. In a number of decisions, legitimate is termed as lawful, real or genuine.

8. In common law, the legal significance of the word "children" if used in a will is legal children and it will not include illegitimate children unless the testator intends to include them. Under the marriage laws where a marriage has been declared void ab initio, the child of such marriage is for all purposes a legitimate child of the parents subject to conditions stated therein.

9. Advanced Law Lexicon, Vol. II, defines legitimate child as one born in lawful wedlock or born before the marriage of its parties, who afterwards marry and which receives the recognition of its father and one of such children is just as legitimate before the law as the other.

10. Illegitimacy is defined as being that which is contrary to law and it is said that the term usually is applied to children born out of lawful wedlock. Black's Law Dictionary, 4th Edn., defines illegitimate child as that which is contrary to law; it is usually applied to children born outside lawful wedlock.

11. Whether the children born to RW 1 who lived with deceased Antony as man and wife are legitimate or not is a significant question to be decided in this case. In India the personal law of succession of Hindus, Christians and Muslims does not recognise children born outside wedlock as legitimate children. Among Christians and Hindus, a husband or wife cannot marry for a second time during the subsistence of the first marriage. For Muslims, their personal law permits polygamy. It simply means that personal laws of the religions in this country recognises only children begotten in wedlock as legitimate children and they alone are entitled to succeed to the estate of their deceased father. Children born out of wedlock are always considered as illegitimate. It is relevant to refer to some of the provisions in the Divorce Act, 1869 and the Hindu Marriage Act, 1955. Section 21 of Divorce Act reads as follows:

21. Children of annulled marriage.- Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made, shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

Section 18 read with Section 19 of the Divorce Act confer jurisdiction upon the court to declare a marriage null and void for the reasons stated therein. Section 21 of the Divorce Act extracted above confer status of legitimacy only to a limited class of children stated therein who are begotten before the decree is made in an annulled marriage and shall be entitled to succeed to the estate of the parent who at the time of marriage was competent to contract, as legitimate children. Thus Section 21 does not confer such status even on all children begotten in all marriages subsequently declared null and void.

12. Section 12 of the Hindu Marriage Act enumerates the grounds to annul a

marriage by a decree of nullity. Section 16 of the Hindu Marriage Act deals with legitimacy of children of void and voidable marriage.

13. Section 16 of the Act confers status on a limited class of children as legitimate and they are entitled to succeed to the estate of the deceased along with the children born in the wedlock. Under Hindu Law an illegitimate child has never been considered as nullius filius. In some cases, he has been considered to be a member of the family. More appropriately, it can be said that in Hindu Law the illegitimate child and putative father and natural mother have never been considered strangers to each other. From the texts and the judicial pronouncements, one thing is manifestly clear that an illegitimate son is recognised but with many riders and his rights are discriminatory in nature. A son born out of wedlock is also accepted and not totally thrown out but he had been given an inferior status and thus compassion along with discrimination exists. The Apex Court in *Gaurav Jain Vs. Union of India and others*, while dealing with writ petition under Article 32 of the Constitution of India pertaining to the plight of prostitutes/ fallen women and their progeny, spoke about the preamble of the Constitution and stated that it is an integral part of the Constitution and that pledges to secure socio-economic justice to all its citizens with stated liberties, equality of status and of opportunity, assuring fraternity and dignity of the individual in a united and integrated Bharat and illegitimate children too are part of citizenry. It seems imperative to refer to the provisions pertaining to non-discrimination while dealing with the children as stipulated in the international instruments.

Universal Declaration of Human Rights, Article 25(2):

Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

14. Muslim Law prohibits inheritance to property of the deceased by illegitimate children. One of the reasons for permitting polygamy is that under no circumstances the child born to them shall be illegitimate. The system of monogamy prevails in Hindu and Christian religions and members of such communities are expected to cohabit with their lawful spouses only. Polygamy is permitted among Muslims to prevent birth of illegitimate children as one of its pious objects. At present in our society a large number of illegal relationship prevail and the number of illegitimate children are increasing in alarming proportions in all communities. Several men and women live together without marrying and the society is not attributing immorality to them. The only exception is the life of prostitutes (unchaste women) and children born to them, who cannot claim father for them.

15. Section 125(1), Criminal Procedure Code gives statutory recognition for right

of maintenance of children both legitimate and illegitimate from their father. Since children have no role in their birth, illegitimate children are like any other children born to their parents. It is unfortunate that there is no law in this country to protect the interest of the illegitimate children. Their right to succeed to the estate of their deceased father or mother is not recognised by the administrators or government, as the case may be by enacting legislation. The legitimate status of the children which depend very much upon the marriage between their parents being valid or void, thus turned on the act of parents over which the innocent child had no hold or control. But, for no fault of it, the innocent baby has to suffer a permanent setback in life and in the eyes of the society by being treated as illegitimate. In other words, for the act of the parent, the innocent children should not be made to suffer. There are several cases in our country where man and woman live together as husband and wife, children are begotten to them and are taken care of by them. When the question arises as to whether such children can succeed to the estate of their deceased parents, there is no statute in this country enabling them to inherit the property of their parents.

16. Protection of women under Domestic Violence Act, 2005 defines relationship as a relationship between two persons who live or have at any point of time lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The modern enactment recognises and justifies to the limited extent the relationship in the nature of marriage is a cohabitation even without a lawful marriage. Married woman or a woman having relationship in the nature of marriage live and share the household are entitled to the legal protection along with others as per provisions envisaged in the above Act. Days are not far off where surrogate mother would get protection.

17. An illegitimate child not only suffers from a social stigma in every legal order but he is also put to an unfortunate position as regards his rights of inheritance and support are concerned. Its suffering or deprivations are based on the maxim, *pater est quern nuptiae demonstrant*.

European convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Article 14:

The enjoyment of rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Declaration of the Rights of the Child-Principle I:

The child shall enjoy all the rights set forth in this declaration. Every child without any exception whatsoever shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion,

political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

International Covenant on Economic, Social and Cultural Rights, 1966:

Article 2 (2) states that the parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Civil and Political Rights:

Article 24 (1). Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property, or birth, the right to such measures of protection as required by his status as a minor, on the part of his family, society and the State.

Convention on the Rights of the Child:

Article 2 (2) states that parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions...

18. Regarding adoption, prior to the Hindu Adoptions and Maintenance Act, 1956 only legitimate sons could be adopted but an illegitimate son could not be adopted. The Act now imposes no such restriction. Section 2(1), Explanation speaks of "any child legitimate or illegitimate".

19. In Hindu Minority and Guardianship Act, 1956, the distinction is maintained u/s 6 (a) and (b). Various provisions are there in part III and part IV of the Constitution to safeguard the interests of the "child". The word "child" is without any qualification attached to it.

20. In United Kingdom and the United States as late as 1960's illegitimacy carried on a strong social stigma. In social and sometimes legal terms, the individual child so born was termed a "bastard".

21. The proportion of children born extramaritally (outside marriage) varies widely among countries. In Europe, figures range from 3 per cent in Cyprus to 55 per cent in Estonia. In Britain the rate is 42 per cent (2004). The rate in Ireland is 31.4 per cent close to the European average of 31.6 per cent.

22. In 1968, the Western Australian Government constituted the Law Reform Commission to consider whether any alterations were desirable in the law of succession in Western Australia in relation to illegitimate children. The Committee recommends as follows:

(i) The relationship of an illegitimate child to its parents be deemed legitimate for all purposes relating to intestate succession, so as not only to give the illegitimate the right to succeed to the property of either parent and vice versa, but also to establish the usual and corresponding rights of succession between

the child and all other lineal and collateral kindred.

(ii) The terms "children", "issue" and other words of relationship where used in a will or other disposition, be deemed to include illegitimates and persons claiming through illegitimates, unless a contrary intention appears.

23. In 1971, Parliament enacted the Administration Act, 1971 (WA), the Property Law Act Amendment Act, 1971 (WA) and the Wills Act Amendment Act, 1971 (WA), to implement the committee's recommendations.

24. In *Sheela Barse Vs. Secretary, Children's Aid Society and others*, , the Supreme Court said that children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. The Children Act has made elaborate provisions to cover the International Charters relating to the rights of the children. The Supreme Court referred to the Declaration of Rights of the Child, 1959. International Covenant on Civil and Political Rights, 1966 and said that India as a party to these International Charters having ratified the Declarations, it is an obligation of the Government of India as also the State machinery to implement the same.

25. More pragmatic approach with a touch of humanity has been depicted in the Declaration of the Workshop on Family Laws and Human Rights of Women, Lahore on 4.8.1995 and 5.8.1995, in which representatives from Bangladesh, India and Pakistan participated. In this Declaration, besides many other things, two significant declarations were made:

(i) All children born in wedlock or out of it shall enjoy equal status and equal rights.

(ii) The law must recognise both parents as the natural guardians of the child.

26. Legitimacy is a status. It is the condition of belonging to a class in society the members of which are regarded as having been begotten in lawful matrimony by the men whom the law regards as their fathers. The status of legitimacy gives the child certain rights both against the man whom the law regards as his father and generally in society. An illegitimate child in the eyes of law is *nullius filius*. So, a relation means a relation flowing from lawful wedlock. The rule under law of succession is that children means legitimate children. So the statutory provisions and judicial decisions are so clear that under Christian Law in India a child does not include illegitimate child and, therefore, such child is not entitled to a share in the property of the deceased parents. The same is the position in Muslim and Hindu communities subject to some riders in Hindu community which we have discussed in this judgment.

27. Of late, courts in our country began to recognise man and woman living under the same roof as husband and wife. The Apex Court in *Rameshwari Devi Vs. State of Bihar and others*, , considered the question while dealing with the claim for family pension and its entitlement to children of a second marriage of a

deceased employee. A Hindu contracting a second marriage during the subsistence of his first marriage has committed misconduct under the Central Civil Service (Conduct) Rules read with the Bihar Government Servants' Conduct Rules, 1976. The Apex Court considered a situation that when two persons are living together for long years as husband and wife, in such circumstances, even in the absence of proof, a presumption of valid marriage between them would arise. The Apex Court quoted with approval the decision in *Badri Prasad Vs. Dy. Director of Consolidation and Others*, wherein it is stated that strong presumption arises in favour of wedlock where the parties have lived together for a long spell as husband and wife. There are various other judgments of the Apex Court and various High Courts holding that where a woman and man have lived for long years as husband and wife, then a presumption arises in law of legality of marriage existing between the two, though the presumption is rebuttable.

28. A remarkable change in the concept of succession by illegitimate children to the retirement benefit of their father was pronounced by the Apex Court in a latest decision in *Vidhyadhari and Others Vs. Sukhrana Bai and Others*. The Supreme Court considered the basic issue regarding legitimacy of the children born to a mother who contracted marriage with a person whose first marriage was not dissolved. The Apex Court observed as follows:

...The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen during his lifetime. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his provident fund, life cover scheme, pension and amount of life insurance and amount of other dues. Under such circumstances, she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen.

29. Hon'ble Supreme Court found that four children were born to the deceased in Vidhyadhari in the cohabited relationship. Legitimacy was in fact conferred on the four children for the reason that Sheetaldeen and Vidhyadhari cohabited for a long period and Sheetaldeen treated Vidhyadhari as his wife. The direct issue before the court was about the status of children born to a woman through a man who cohabited with the said woman and held that such children are legitimate and are entitled to a share (allotment) of the service benefits of their father along with the legally wedded wife.

30. The provisions of Section 125 of Criminal Procedure Code which is secular in nature is applicable to persons of all communities in India independent of their personal law. Right of the child legitimate or illegitimate under the Code of Criminal Procedure is an individual right of the child independent of the mother. While deciding the question of right of a child for maintenance, paternity and not

legitimacy has to be taken into account. The provision aims at securing enforcement of duty imposed upon a person by law. The courts in India recognised the presumption of valid marriage from long cohabitation. Several cases have come to our notice where a man and woman living together as husband and wife without undergoing the formalities of marriage and children born in such relationship are not treated as legitimate under law.

31. No child is born in the world without a father and a mother. As said earlier the child has no role to play in his/her birth. Many such illegitimate children may not know who their progenitors are. The children born to unchaste women belong to that class. The mother of such children also may not know who is the father of the child. But the fact remains that all children both legitimate and illegitimate are born to their father and mother. In the present world by scientific means or tests, identity of the father of any child can be established. Children born to a mother and father who cohabited for a considerable period of time as husband and wife and being regarded by their neighbours and friends as husband and wife and their parents also acknowledged them as their children and so described in documents like ration card, voters' list and school register, there is a strong presumption that the children are legitimate children. Parliament recognised all the children both legitimate and illegitimate to be maintained by their father under the Code of Criminal Procedure. If there is no discrimination between legitimate and illegitimate children for maintenance why should these children be also not allowed under law to succeed to the estate of their parents. Such class of illegitimate children born to the father and mother who lived as husband and wife are to be presumed to be legitimate and we hold that such children shall be entitled to inherit the properties of their parents along with the children born in valid marriage.

32. The conferment of social status of legitimacy on a group of innocent children who are otherwise treated as illegitimate is the prime object of Section 125 of the Code of Criminal Procedure. The status of legitimacy gives the child certain rights both against the man whom the law regards as his father and generally in society. The social status of children is determined by the act of their parents. If they have entered into a valid marriage, the children are legitimate; but if the parents committed a folly, as a result of which the child is conceived, such innocent child is labelled as illegitimate. Realising this situation Parliament enacted Section 125 of the Code of Criminal Procedure which protected the legitimacy of such innocent children. This was a bold, courageous and dynamic legislation which was adopted by other advanced countries as stated supra.

33. If all the children both legitimate and illegitimate are held entitled to the maintenance, there is no reason or logic in denying them their right of inheritance to succeed to the properties of their parents in cases of intestacy. We suggest to the Central Government to enact a legislation to confer right of succession on all illegitimate children irrespective of their religion in tune with Section 125 of the Code of Criminal Procedure which is for all purposes a secular

legislation. This Court also suggest to enact separate laws for members of different religions or a single statute like Section 125 of the Code of Criminal Procedure enabling illegitimate children to succeed to the estate of their deceased father and mother.

34. The fact and legal position of the case on hand also revolves more or less in the same pivot. The first wife of deceased Dr. Antony might have deserted him for she never came back to continue the marital relationship. The parents of respondent Nos. 4 and 5 lived together as husband and wife till the death of the deceased.

35. At this juncture, we have noticed a piece of legislation in New Zealand, namely, Status of Children Act, 1969. Section 3 of the said Act stipulates that relationship between every person and his father and mother is to be determined irrespective of whether the father and mother are or have been married to each other and all other relationships are to be determined accordingly. In England also, social reforms were introduced to supplement or improve upon the Matrimonial Causes Act by enacting Family Law Reform Act, 1969 and also the Family Law Reform Act, 1987 to confer limited right of succession to the illegitimate children in the property of their parents or allowing the parents to succeed to the property of their illegitimate children. The object of Section 16 of the Hindu Marriage Act and Section 21 of the Divorce Act was to protect children born of void or voidable marriages. A limited section of children alone are protected under the said statutes. We are of the strong view that all illegitimate children, though born out of wedlock, are children born to a man and woman who cohabited for some time and are in substance husband and wife for all purposes. Therefore, we have no hesitation in holding that the two children born to deceased Antony through RW 1, namely, respondent Nos. 4 and 5 are legitimate children entitled to succeed to the estate of deceased Dr. Antony.

36. Last question raised in this appeal is for enhancement of total compensation. On this issue, the appellants and respondent Nos. 4 and 5 have joined together and contended that monthly income fixed at Rs. 7,000 is too low. Counsel for the appellants also relied on Exh. A20 which contains the pay scale of the teaching staff of medical colleges. We also agree with this contention because admittedly the deceased was an eminent doctor and has worked in several private hospitals. The fact that he got admission to the M.S. course in the Medical College Hospital, Kottayam and was studying there at the time of accident was proved by records. Had he not met with an untimely death, he would have certainly completed his course successfully and could have easily taken up a teaching assignment in any medical college in Kerala. We agree with the contention of the appellants and respondent Nos. 4 and 5 that the income fixed by the Tribunal for awarding compensation for loss of dependency is very low. We, therefore, re-fix the monthly income of deceased at Rs. 12,000 and after deducting one-third for personal expenses, the annual income for granting compensation for loss of dependency is re-fixed at Rs. 96,000. Thus the compensation payable under this

head by applying the relevant multiplier, namely, 16, is Rs. 15,36,000. We do not think enhancement under any other head is called for in this case. The remaining issue is only about the apportionment of the additional compensation awarded by us. We notice that the appellant No. 1 is a qualified medical doctor and obviously she would be earning reasonable income and the mother of the respondent Nos. 4 and 5, namely, RW 1 also is a person well employed in the Defence Service and was stated to be earning Rs. 15,000 per month when the proceedings before the Tribunal was going on. Considering all these aspects and the fact that Tribunal has awarded compensation in favour of appellant Nos. 4 and 5 who are aged parents of the deceased, though, not falling under the category of legal heirs under the Indian Succession Act, we direct the Tribunal to release a further sum of Rs. 50,000 each to appellant Nos. 4 and 5 with proportionate interest thereon. Counsel for the appellants pressed for allocation of one-third of the compensation in favour of appellant No. 1 being the widow of the deceased in terms of Section 33 (a) read with Section 36 of the Indian Succession Act. This was opposed by counsel for respondent Nos. 4 and 5 on the ground that no such ground is raised in this appeal even though the Indian Succession Act provides for allocation of one-third to the widow of the deceased. We are not inclined to grant one-third in favour of appellant No. 1 for more than one reason. In the first place, the distribution of the awarded amount among the claimants including the parents who are also appellants herein was made by the Tribunal without strictly following the provisions of the Indian Succession Act. Further, a wider meaning to the words legal heir was given by the Supreme Court in the decision cited above. Above all, the factual situation in this case is such that the deceased had virtually abandoned the appellant No. 1 and entered into a relationship with another lady, namely RW 1 and two children were born in that relationship. The second lady, namely, RW 1 has not come forward with any claim for compensation, probably because she is not a legal heir under the Indian Succession Act. We, therefore, order that out of the balance compensation left after giving the amounts granted to the parents of the deceased, appellant Nos. 1 to 3 will take 3/5th and balance 2/5th will go to respondent Nos. 4 and 5 which is the rates of apportionment of compensation among the legal heirs, fixed by the Tribunal. Appellant Nos. 1 to 3 and respondent Nos. 4 and 5 will share their respective portions equally among them. Insurance company is directed to deposit the additional compensation with interest at the rate of 7 1/2 per cent per annum from the date of application till date of deposit. The appeal stands allowed to the above extent.

37. The Registry shall send a copy of this judgment to the Ministry of Law and Justice, Government of India, New Delhi; to the Chief Secretary to the Government of Kerala, Thiruvananthapuram; to the Chairman, Law Commission of India, New Delhi and Justice V.R. Krishna Iyer, Chairman, Law Reforms Commission (Kerala), Ernakulam.