

(1979) 11 AP CK 0008

In the Andhra Pradesh High Court

Case No : Case Referred No. 168 of 1976

Smt. Lakshmisagar Reddy

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 21-11-1979

Acts Referred:

Airlines Corporation Employees Service Rules — Rule 73
Estate Duty Act, 1953 — Section 2(15), 2(16), 3(1), 5(1), 6

Citation : (1980) 16 CTR 366 : (1980) 123 ITR 601

Hon'ble Judges : C. Kondaiah, C.J.;Punnayya, J

Bench : Division Bench

Advocate : C. Trivikrama Rao, for the Appellant; P. Rama Rao, for the Respondent

Judgement

Kondaiah, C.J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), at the instance of the accountable person, by the Income Tax Appellate Tribunal, Hyderabad Bench, for the opinion of this court on the following question of law :

" Whether, on the facts and in the circumstances of the case, the compensation amount of Rs. 74,960 was property passing on the death, liable to estate duty under the Estate Duty Act of 1953 ? "

2. The material facts as disclosed from the statement of case may briefly be stated: The accountable person's husband, N. Vidyasagar Reddy, a captain in the Indian Airlines Corporation, died in an air accident. The Indian Airlines Corporation (employer) paid to the deceased captain's wife (applicant herein) a sum of Rs. 91,586 which included a sum of Rs. 74,960 towards compensation under Rule 73 of the Indian Airlines Corporation Employees' Service Rules and Establishment Orders. The accountable person claimed exemption in respect of the compensation amount of Rs. 74,960 on the ground that the same was not property that passed on to her on the death of her husband since the deceased had no vested or contingent interest in it. Rejecting the claim of the accountable

person and relying upon the decision of the Delhi High Court in *The Controller of Estate Duty, Delhi Vs. Late A.T. Sahani through L.A. Sahani, New Delhi*, the Asst. Controller included the sum of Rs. 74,960 in the estate of the deceased. The appeals by the accountable person to the Appellate Controller and the Income Tax Appellate Tribunal were without success. Hence this reference.

3. The contention of Sri C. Trivikrama Rao on behalf of the accountable person is that the deceased captain did not acquire any right in respect of the compensation amount of Rs. 74,960 paid by his employer after his death to his wife, the accountable person, at any time during his lifetime till his death. The amount is not payable automatically. The employer has discretion under Rule 73 to pay the same only when the accident is not attributable to the deceased's own negligence, default or breach of instructions. Therefore, it does not form part of the estate left by the deceased captain.

4. This claim of the accountable person is resisted by Sri P. Rama Rao, learned standing counsel for the revenue, contending, *inter alia*, that the deceased captain had a right to nominate a person or persons to whom compensation should be paid in case of his accidental death while on duty, that Rule 73 confers on the deceased an interest in the property (compensation payable to his legal representatives) in the event of his death, that although the property has come into existence only after the death of the deceased, it has got direct nexus or connection to the employment or service of the deceased captain and that, therefore, it passes on to his heirs on his death within the meaning of Sections 5 and 6 of the Act.

5. The crux of the problem is whether the compensation of Rs. 74,960 is or is not property that passed on to the accountable person on the death of the deceased captain within the meaning of Section 5(1) of the Act or it is property which is deemed to pass on his death u/s 6 of the Act.

6. Section 5 of the Act is the charging section. The principal value of all property of every person dying after the commencement of the Act, which passes on the death of such person, is liable to a duty called "estate duty" u/s 5(1) at the rates fixed in accordance with Section 35. u/s 6 property which the deceased was, at the time of his death, competent to dispose of shall be deemed to pass on his death. Sections 7 - 17 deal with certain kinds of properties which are deemed to pass in certain situations. Section 3(1)(a) indicates as to under what circumstances, for the purposes of the Act, a person shall be deemed competent to dispose of property. Where a person has such an estate or interest in the property or such general power as would, if he were *sui juris*, enable him to dispose of the property, he shall be deemed competent to dispose of such property u/s 3(1)(a). To put it differently, he must have an estate or interest in the property or he must have general power under law, as if he is the legal heir, entitling him to dispose of the property. Unless either of the aforesaid conditions is satisfied, it cannot be said that, for the purposes of the Act, a person shall be deemed competent to dispose of the property.

7. Section 5(1) must be read with Section 2(15) which defines " property " and Section 2(16) which defines the expression "property passing on the death". The expression " property passing on the death " includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression " on the death" includes "at a period ascertainable only by reference to the death ". The definition is an inclusive one. The term " passes" means changes hands. As observed by the Supreme Court in *Controller of Estate Duty, Gujarat Vs. Hussainbhai Mohamedbhai Badri*, , "what is relevant in determining the scope of the expression "property passing on the death of the deceased" is the change in the beneficial interest and not title." *Mahendra Rambhai Patel Vs. Controller of Estate Duty, Gujarat*, is an authority for the proposition that in determining whether a particular property "passed" on the death of a deceased what has to be seen is whether that deceased had any beneficial interest in that property and whether that interest " passed " to some one on his death. Therefore, the true test is whether the deceased had any beneficial interest in the property said to have passed to someone on his death.

8. In order to find out the nature and character of the compensation in question we may usefully extract Rule 73 of the Indian Airlines Corporation Employees' Service Rules and Establishment Orders, which reads:

" In the event of death or disablement while on duty by an accident to an employee or in the event of loss or damage to the personal belongings caused while the employee is travelling on duty, the Corporation may pay compensation to him or to his legal representative(s), as the case may be, at such rates and on such conditions as it may lay down from time to time, unless such accident, loss or damage is attributable to his own negligence, default or breach of instructions."

9. Rule 73 requires the Corporation to pay compensation to its employee disabled while on duty by an accident or to its employee for whose personal belongings loss or damage is caused while he is travelling on duty at such rates and on such conditions as it may lay down from time to time. Similarly, in case of his death, the Corporation may pay compensation to his legal representatives. Compensation under this rule is not payable if the accident, loss or damage is attributable to the negligence, default or breach of instructions on the part of the employee. The word used in this rule is " may " and not " shall ". The Corporation normally pay³ compensation if the provisions of Rule 73 are satisfied. There is no ascertained amount in that regard. It admits of no doubt that any compensation paid or payable under Rule 73 to the employee himself for any disablement while on duty by an accident or for any loss or damage caused to his personal belongings while travelling on duty is " property " within the meaning of of Section 2(15) which passes on his death within the meaning of Section 5(1) of the Act.

10. Nevertheless, the controversy is with regard to the compensation payable to

the legal representative or representatives of the employee in the event of his death by an accident. Rule 73 makes it abundantly clear that in the event of an accidental death of an employee of the Corporation, the Corporation may pay compensation to the legal representative or representatives of the deceased at such rates and on such conditions as it may lay down from time to time. The main ingredients, as pointed out earlier, for payment of compensation under Rule 73, have to be satisfied first.

11. There is no connection or nexus with regard to the payment of compensation under Rule 73 to the deceased employee's legal representative or representatives. No right to claim compensation would accrue under Rule 73 to an employee who died in an air accident while on duty or to an employee for whose personal belongings loss or damage is caused while travelling on duty. The payment is directly payable to the legal representatives. The right to receive the payment under Rule 73 accrues only to the legal representatives after the death of the employee. No beneficial interest can be said to have vested in the deceased employee before or at the time of his death in respect of the compensation payable to his legal representatives after his death. Neither compensation nor right to receive compensation would accrue to the deceased employee before his death. Section 6 cannot be applied to the case on hand as it cannot be said that the deceased had a right in the property at the time of his death or was competent to dispose of the compensation amount of Rs. 74,960. By the time of his death it did not accrue either to him or to his legal representatives. The compensation of Rs. 74,960 had actually accrued subsequent to the date of the death of the employee. By no stretch of imagination it can be said that the deceased was competent to dispose of that compensation amount even at the time of his death.

12. True, as submitted by Mr. P. Rama Rao, learned counsel for the department, the word "property" defined in Section 2(15) includes any interest in property, movable or immovable, and the expression "property passing on the death" defined in Section 2(16) takes in property passing either immediately on the death or after any interval, either certainly or contingently, and the expression "on the death" includes "at a period ascertainable after death". According to Mr. Rama Rao, compensation amount has passed immediately on the death or after an interval to the legal representatives of the deceased employee. It does not matter whether such passing is not certain but only contingent as the definition of the expression "property passing on the death" is wide enough to take in property passing either certainly or contingently. The more pertinent question in the instant case is whether the compensation amount paid by the Corporation to the deceased employee's wife (accountable person) belonged to the deceased at any time before his death or whether he had any right in it. Admittedly, it did not form part of his estate. Nor can it be said that he had got any interest in it to dispose of the same. He can dispose of only his property or estate but he cannot be deemed to have competency to dispose of any property which did not accrue to him at all and over which he has no right.

13. In order to attract the provisions of Section 5(1) of the Act, the following ingredients must be satisfied.

(1) The property must be in existence at any time before the death of the deceased.

(2) The deceased must have a beneficial interest, be it in praesenti or contingent, in the property.

(3) The deceased must be in possession and control, be it actual, constructive or beneficial, of the property.

(4) The deceased must have power to dispose of such property.

14. If the deceased had obtained an accident insurance or life insurance policy and paid some amount towards the premiums, the amount payable by the insurance company would certainly form part of the estate of the deceased. But the compensation paid to the legal representatives in respect of an accidental death under the Motor Vehicles Act or under any such similar provision would not form part of the estate of the deceased.

15. In the present case, there is no guarantee that the Corporation would certainly pay any sum either to the nominee or to the legal representatives of the deceased, as the conditions envisaged in Rule 73 have to be satisfied. The right to nominate a person or persons who would be entitled to receive compensation payable by the Corporation under Rule 73 cannot be equated to a right, if any, of the deceased to dispose of the compensation amount at the time of his death. The competency to dispose of the property within the meaning of Section 6 would mean the right of the deceased at the time of his death to do so as he pleases with regard to such property. The deceased employee of the Corporation was not competent to dispose of the compensation amount due and payable to his legal representatives except to nominate his or her own nominee or nominees to receive the amount due and payable under Rule 73 after his death.

16. This view of ours gains support from the decision of a Division Bench of the Jammu and Kashmir High Court in *Controller of Estate Duty Vs. Kasturi Lal Jain and Mohini Devi Muju*, wherein the compensation paid by the Indian Airlines Corporation to the heirs of the deceased passenger, who died in a plane crash, was held to be not "property" of the deceased which passed on his death to his heirs within the meaning of Section 5 of the Act. It was further observed that if at all the property passed, it passed directly from the Indian Airlines Corporation to the heirs of the deceased. In other words (p. 443):

"...the deceased was not in possession of the property, had no interest in it and, therefore, the heirs could not get the property merely by virtue of the death of the deceased, for they got the property only because the death took place in a particular manner, namely, in a plane crash. Thus, in our opinion, it cannot be said by any stretch of imagination that the compensation received by the

dependants of the deceased would be property in the hands of the deceased or even of the deceased which would pass to their heirs."

17. We shall now examine the decisions cited on behalf of the revenue which took a contrary view. The decision of the Delhi High Court in *The Controller of Estate Duty, Delhi Vs. Late A.T. Sahani through L.A. Sahani, New Delhi*, relied upon by the Tribunal and the revenue relates to payment of gratuity to the legal representatives of a deceased member of the flying crew of the Indian Airlines Corporation under Rule 159 of the Indian Airlines Corporation (Flying Crew) Service Rules. Under r 159 a member of the flying crew was entitled to certain compensation at specified rates in the event of his death or an injury caused by an accident. That case is clearly distinguishable on facts which are not in dispute. The facts of that case are found in para. 2 of the judgment at pages 510 and 511, which are as follows :

" The deceased, A. T. Sahani, who was an employee of the Indian Airlines Corporation, died on 11th September, 1963, in an air crash while on duty. Under Rule 159 of the Indian Airlines Corporation (Flying Crew) Service Rules a member of the flying crew was entitled to certain compensation at specified rates in the event of his death or an injury caused by an accident during or as a result of air journey performed as such in the Corporation's service...

The compensation payable under the said rule was in addition to the compensation which the Corporation had agreed to pay under an agreement described as Pilot Agreement entered into with the Corporation on 1st April, 1960, according to Rule (iv) whereby it was provided that the Corporation shall pay compensation for the death of a pilot, a maximum of 36 times his monthly basic pay if such death occurred in the circumstances mentioned in the abovementioned Service Rules or while travelling on duty...

In accordance with the terms of the aforesaid agreement between the deceased and his employer, a sum of Rs. 68,300 was received by his widow as compensation."

18. Therein it was held that the payment of compensation was not gratuitous nor did it depend upon the discretion of the Corporation. But it is a compulsory payment which the Corporation is bound to make on the happening of a certain event to the heirs of the deceased. Therefore, there is a direct nexus between the right of the deceased as an essential condition of his service to have that compensation paid to his legal representatives and the right of his legal representatives to receive that payment. The right of the deceased in the circumstances was held to be interest in property as in the case of a claim since he had a right to nominate a person to whom the payment should be made which indicates the power of disposition over the property.

19. In the aforesaid decision, the member of the flying crew was entitled under Rule 159 of the Indian Airlines Corporation (Flying Crew) Service Rules to certain compensation at specified rates in the event of his death.

20. But in the present case under Rule 73 the deceased employee was not entitled to any compensation. It is his legal representatives that are entitled to receive the payment from the Corporation on certain conditions being satisfied as indicated in that rule. No right or interest has in fact accrued to the deceased employee under Rule 73 in the case on hand. We are unable to. persuade ourselves to agree with the view of the Delhi High Court in *The Controller of Estate Duty, Delhi Vs. Late A.T. Sahani through L.A. Sahani, New Delhi*, that the compensation payable as a reward for the services which the deceased was required to render was a part of the remuneration payable under the Service Rules and the Pilot Agreement though no contribution for the purpose of earning such compensation has been made. We are also unable to agree with the view that the object of the agreement was to make some sort of provision to the legal representatives of the deceased employee and, therefore, the deceased had interest in it.

21. The Tribunal, in our considered opinion, has committed a grievous error in law in following the decision of the Delhi High Court in *The Controller of Estate Duty, Delhi Vs. Late A.T. Sahani through L.A. Sahani, New Delhi*, , without applying its mind to the facts and circumstances of the case. It erred in thinking that that case is on all fours with the case on hand. Except that the deceased husband here was an employee (captain) of the Indian Airlines Corporation and the deceased, Sahani, also was an employee (member of the flying crew) of the Indian Airlines Corporation and that both of them died in air accidents while on duty, we do not find any similarities on facts and the material provisions of the rules whereunder payment in question has been made.

22. We may now refer to the decision of the Gujarat High Court in *Bharatkumar Manilal Dalal Vs. Controller of Estate Duty, Gujarat*, , and that of the Madras High Court in *M. Ct. Muthiah and Another Vs. Controller of Estate Duty*, . These two cases relate to the amounts paid to the beneficiaries and legal heirs of the deceased passengers who died in plane crashes under the policies of accident insurance. These two cases are not similar to the case on hand. In the first case, the deceased, who had purchased the accident insurance policy, had paid one premium and, therefore, he had interest in the policy. He was entitled to nominate whomsoever he liked to receive the amount as beneficiaries under the policy. The property in the nature of interest was in existence in the lifetime of the deceased which passed on his death to his beneficiaries nominated or to his legal representatives, as the case may be, and, therefore, it is dutiable u/s 7 of the Act. Indisputably, the deceased had a right and interest in the property under the insurance policies which he could have disposed of earlier. However, we are unable to agree with the views of the Madras as well as Gujarat High Courts that the right to nominate the beneficiaries under the insurance policy alone amounts to interest in property. Therein Section 15 of the Act was attracted as admittedly premiums had been paid on the insurance policies. Hence, those two decisions would not in any way come to the aid or assistance of the revenue.

23. In *Controller of Estate Duty Vs. Estate of Late R. Ramanujam*, it was held that the receipt of compensation by the legal representatives of the deceased employee of a company under a personal accident insurance policy obtained voluntarily by the employer company from an insurance company in respect of the lives of each of its employees and the payment of premiums by the company for and on behalf of its employee did not form part of the estate of the deceased employee as the taking of the policy was not a part of the scheme of the contract of service but it was a voluntary act of the employer with which the employee was not concerned. It was further held therein that in order to make the amount of compensation received by the legal representatives of the deceased employee liable to estate duty, it must be established that the deceased should have provided either by himself or in concert or arrangement with any other person for getting that compensation. Where there was no such nexus or concerted act, overt or covert, on the part of the deceased which resulted in the payment of compensation to the legal representatives, such property shall not be deemed to pass on his death. True, in the aforesaid case, it was found as a fact that the employer company had taken out a personal accident insurance policy by paying premiums for and on behalf of the employee and his legal representatives not as a part of the scheme of the contract of service but as a voluntary act.

24. The amount of pension granted to the widow of the deceased employee by the trustees of the employer-company, who had an absolute and uncontrolled discretion in the exercise of the powers in regard to the payment of pension, was held by the Chancery Division in *In re J. Bibby & Sons Ltd., Pensions Trust Deed: Davies v. IRC* [1952] 2 All ER 483 to be not exigible to estate duty. The pension was held to be not "property" within Section 2 of the Act of 1894 and the widow had no beneficial interest since she had no enforceable right to the pension, the same being a gratuitous provision by the company without any bargain or agreement between the company and the deceased employee.

25. For all these reasons, our answer to the question is in favour of the accountable person holding that the compensation amount of Rs. 74,960 was not property passing on the death liable to estate duty under the Act. The accountable person will have his costs of this reference. Advocate's fee Rs. 300.