

(1997) 03 KAR CK 0051

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 466 of 1992

Smt. Lalithamma and Another

APPELLANT

Vs

Agricultural Engineer, Karnataka Agro Industries Corporation,
Dharwad and Others

RESPONDENT

Date of Decision : 03-03-1997

Acts Referred:

Hindu Marriage Act, 1955 — Section 12, 16, 16 (2)
Workmens Compensation Act, 1923 — Section 10, 2 (1) (d), 3, 4

Citation : (1999) 1 ACC 175 : (1998) ACJ 477 : (1999) 1 CivCC 225 : (1998) 2
DMC 503 : (1998) 4 KarLJ 172

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri B. Chidananda, for the Appellant; Sri. S.P. Kulkarni, Sri
Manikappa Patil Advs. and Sri HullppaoorGovernment HerPleader, for the
Respondent

Judgement

1. Heard the learned Counsel for the appellants. This is an appeal from the judgment and order dated 21-1-1989, delivered by Commissioner of Workmen's Compensation and Labour Officer, Hubli, disposing of an application for compensation under Sections 3/4 and 10 of the Workmen's Compensation Act.

2. Relying on the statement of Smt. Sarojini, the Tribunal has observed that the appellant, who was applicant 7, in the claim petition, has been the kept mistress of late Shankar Ismailappa and applicant 8, in the claim petition, is the minor son of applicant 7. The two applicants 7 and "8, have come up in appeal, as no compensation has been awarded in" applicant 8's favour, nor any share has been given in compensation awarded and the Tribunal has awarded a sum of Rs. 5,000/- only to applicant 7 as compensation.

3. I have heard the learned Counsel for the appellants, learned Government Pleader and the learned Counsels for the other respondents.

4. The learned Counsel for the appellants has contended before me that the

award has been given in a very hurried manner without appellants being given opportunity to show that appellant 1 had been the wife of the deceased. He submitted no doubt, the Commissioner has awarded a "sum of Rs. 5,000/- to the present appellant 1 while allowing share in compensation to Smt. Sarojini, who is respondent 1 and share in compensation has been awarded to appellant 2 who is son of the deceased. The learned Counsel urged that appellant 1 has been entitled to an equal share in compensation being the widow (2nd wife) of the deceased.

He submitted that both the wife should have been awarded equal share. Learned Counsel further submitted that appellant 2, is admittedly the son of Shankar Ismailappa and there is no dispute about it. Smt. Sarojini has not stated that appellant 2, is the son of only appellant 1, with some other person. It is nobody's case and therefore, appellant 2, that is applicant 8, is admittedly the son of Shankar Ismailappa, as such, he should have been awarded compensation. Learned Counsel for the appellants further contended that the salary of the deceased was Rs. 1350/- per month. The learned Counsel further contended that in view of the provisions of Section 4 of the Act, the death had taken place, the compensation should have been ascertained by applying the formula of 40% of the amount of monthly salary of the deceased employee by the multiplier as indicated in the Schedule IV. Learned Counsel submitted that at the time of the death by accident, the age of the deceased was 41 years. As stated by Sarojini, whose statement has been relied on by the Counsel submitted that in this view of the matter, the proper and due multiplier of 181.37, should have been applied and the compensation would have been Rs. $1,350 \times 40/100 \times 181.37$, is equal to Rs. 97,939.80 Ps. The learned Counsel submitted that as such, the total compensation that had been awarded to the tune of Rs. 72,548/-, is inadequate amount of compensation. The Contentions made by the learned Counsel for the appellants has been hotly contested by the learned Government Pleader- Huleppa Heroor, while Sri Patil, appearing for respondents 3 to 7, contested first contention only.

5. I have applied my mind to the contentions raised by the learned Counsels for the parties. The learned Counsel for the appellants had invited my attention to the deposition of Smt. Sarojini and that reveals that at the time of occurrence, in which deceased Ismailappa had died, he was aged about 41 years.

6. That Section 4 of the Workmen's Compensation Act, on the date of occurrence, namely 9-7-1987, reads as under:

"4. Amount of compensation.--Subject to the provisions of this act, the amount of compensation shall be as follows, namely:

(a) Where death results from the injury and the deceased workman has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV the amount shown against such limits in the second column thereof:

From injury: --

Monthly amount equal to 40% of monthly wages of the deceased workman

Multiplied by relevant factor

or

an amount of Rs. 20,000 whichever is more.

(b) Not relevant".

A reading of this Section alongwith explanations indicates that the monthly wages of a workman, if in fact, are more than Rs. 1000/-, then for the purpose of clause (a) to Section 4(1), it has to be deemed to be Rs. 1,000/- only. If monthly wages of the deceased had to be deemed to be Rs. 1,000/- per month, then 40% thereof per month will come to Rs. 400/-. The total compensation to which the heirs of deceased workman will be 400×181.37 (40% of Rs. 1,000 x 181.37) Rs. 72,548.00. Thus so far amount compensation awarded is concerned the amount determined by Workmen's Commissioner is correct and it cannot come to Rs. 97,939.80 ps. Had the Explanation 2 to Section 4(1), not been there, there would have been some substance in the contentions of the learned Counsel. As the explanation provides a deeming clause that in cases, where the monthly wages of a workman exceeds Rs. 1,000/-, then for the purposes of calculation under clause (a) of sub-section (1) of Section 4 of the Workmen's Compensation Act, the said wages shall be deemed to be Rs. 1,000/- only and not more. In this view of the matter in my opinion, when the Tribunal computed or assessed the amount of compensation to be Rs. 72,548/-, it did not commit any error of law or error of fact and it is in keeping pace with the requirements of law. Nothing has been brought to my notice which may indicate" any error of question of fact on material on record. In this view of the matter, there is no substance in the contentions of the learned Counsel.

7. That second contention of the learned Counsel for the appellants that appellant 2 has been illegally declined share and lesser sum has been allotted, and she should have been allotted equal share. That appellant 1, has been shown as a kept mistress of the deceased and appellant 2, has been shown as the son of appellant 1, from the deceased, as his name has been mentioned as one of the applicants-heirs of deceased Ismailappa. No doubt, under Hindu Law i.e., under Hindu Marriage Act, bigamy is prohibited, but the position is that appellant 1, was living with Ismailappa as his wife may not under the law recognised, as a legally married wife. But, appellant 1, was living with the deceased Shanker Ismailappa and he has got a son from appellant 1 and there is no dispute about the fact that appellant 2, has also been one of the sons of the deceased Shankar Ismailappa.

8. In Paragraph 8 of the claim petition which appears to have been signed by all, it has been stated:

"Petitioner 1, is the wife, petitioners 2 to 5 are sons and petitioner 6 is the mother, petitioner 7, is the kept mistress and petitioner 8, is the son of deceased

Shankar Ismailappa".

This application has been signed by all including Sarojini and applicant 7 (appellant 1). When the application is signed by Sarojini as well as applicant 7, that is the present appellant 1, the admitted position between the parties emerges that appellant 1, herself had also admitted her position as the kept mistress of the deceased and respondent 1, that is petitioner-claimant No. 1, has admitted that applicant 8 i.e., appellant 2 has been the son of Shankar Ismailappa as per allegations in Paragraph 8. Therefore, both are bound by the admissions. That under Hindu Law, even an illegitimate son is also entitled to inherit the property.

9. A perusal of Section 2(1)(d) of Workmen's Compensation Act also indicates that an illegitimate child, son or daughter or a daughter legitimate or illegitimate, if unmarried and minor can also be taken to be dependent on the earnings of a workman. This indicates that an illegitimate child is also entitled to claim the damages for the loss of his father. Illegitimacy will not deprive him of the right to get the compensation.

10. In the present case, appellant 2 should also have been awarded a share in the compensation which has been awarded. That at the time of death of workman Shankar Ismailappa, applicant 8 i.e., appellant 2 Sunil was minor and aged about 7 years. It appears to be the admitted position between the parties that all the claimants- petitioners including the present appellants 1 and 2 were all dependents upon the income or earnings from the deceased and were entitled to get and be possessed of share in the compensation. No doubt, under the Hindu Marriage Act, the marriage of a second wife during the continuance of marriage and the lifetime of the first wife is prohibited and that may be said to be reducing the position of such a girl who is married as second wife during the life time of first married wife, to be that of a kept mistress. But, Section 16 of the Hindu Marriage Act, very clearly provides that notwithstanding the fact that a marriage is null and void u/s 11 of the Hindu Marriage Act or is so declared to be null and void, the children born of such marriage shall be legitimate children of his father irrespective of the marriage being null and void. Section 16(2) further provides that such a child would be entitled to succeed to property of such a person, that is, to the property of his parents (the father and second wife-the mother of the child might be, whose marriage with the father would have been null and void), but the child will succeed to the property of his father and to the interest of his mother.

11. It will be just and proper to quote Section 16 of the Hindu Marriage Act which reads as under:

"16. (1) Notwithstanding that a 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, 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) Whereas 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".

Thus considered in my opinion, the appellant 2, would definitely be entitled to the equal share in the compensation as other heirs and the compensation awarded is to be divided amongst the heirs equally and the award is modified only to that extent as under:

12. That a sum of Rs. 5,000/-, that has been awarded to appellant 1, is maintained, who is applicant 7, in the petition and the amount has been awarded, it appears with the consent of all the applicants, so there is no question of any interference with that amount. As regards the balance amount of compensation, that is Rs. 72,548/- minus Rs. 5,000/-, that is Rs. 67,548/- shall be divided amongst the 7 heirs, that is applicants 1 to 6 and 8 or say appellant 2 and respondents 3 to 8 in equal shares. The direction of the Commissioner that the sums that have been paid by the two authorities to medical treatment etc., shall be deducted from the sum of Rs. 72,648/-, does not appear to be just. Keeping in view, the human consideration by that amount of the compensation, sum pro- vided for medical expenses cannot be deducted, as in ordinary cases, if the sums would have been incurred for expenditure by the heirs for funeral obsequies, then such amount is awarded in addition to the compensation for loss of income to the family. In this view of the matter, the direction of the Tribunal that the amount that has been given by the respondents 1 and 2, in the claim petition for medical expenses or towards funeral obsequies shall be deducted from the amount of Rs. 72,548/-, is struck down.

The appeal is thus allowed. The appellants, respondents 3 to 8, are declared to be entitled to a sum of Rs. 72,548/- as compensation to be disbursed amongst the appellants and respondents 3 to 8, as mentioned above.

13. The appeal is partly allowed. The interest on the compensation money shall be payable at the rate of 9% per annum. The amount of compensation shall be apportioned by the parties according to the above directions as under;

Rs. 5,000/- to appellant 1 and other claimants are entitled only to a sum of Rs.

9,679-80 Ps. each. Any person keeping or taking in excess is directed to reimburse to the other. This adjustment should be done within a period of three months. If it is not done by the persons getting amounts in excess to their shares and paid to the person entitled by their mutual agreement, it will be open to the party to take action according to law.