

Party Name : CHAYA RANI DEBNATH (BHOWMIK) & ORS Vs BARIK MIAH & ANR

THE HONBLE MR. JUSTICE S.C.DAS

Heard learned counsel, Mr. S. K. Dutta for the petitioners.

Learned counsel, Mr. S. Debnath on behalf of learned counsel, Mr. P. Gautam for the respondent No.2, is present. There is no representation on behalf of the respondent No.1 even in the main appeal.

The brief fact is that for the accidental death of Kamini Mohan Debnath, his wife, Smt. Chaya Rani Debnath(Bhowmik), mother Sushila Debnath, daughters, Smt. Minakshi Debnath and Smt. Manisha Debnath and son, Sri Kamalesh Debnath filed a motor accident claim case vide Case No. T.S.(MAC) 253 of 1998 in the Motor Accident Claims Tribunal (District Judge, West Tripura, Agartala) and that case was disposed of by judgment and award passed by the Tribunal on 19.12.2001. Felt aggrieved with the quantum of compensation, all the petitioners preferred the connected MAC APP No. 25 of 2002 before this Court.

Sushila Debnath, appellant No.2, mother of the deceased, died in the meantime and rest of the appellants filed an application before this Court under Order XXII Rule 3 of CPC seeking substitution of legal representatives of deceased Sushila Debnath, wherein the names of all other appellants and one son and one daughter of Late Sushila Debnath, namely, Sri Arun Debnath and Smt. Chaya Rani Debnath were also arrayed for adding them as appellants. That petition was registered as C.M.Appl. No.48 of 2015 in MAC APP No.25 of 2002 and by order dated 02.02.2015 the said petition for substitution was allowed and as a result in the Memo of appeal the names of all those, mentioned in C.M.Appl. No.48 of 2015, were added as appellants including that of the son and daughter of Late Sushila Debnath, namely, Sri Arun Debnath and Smt. Chaya Rani Debnath.

Now by filing this petition, the original appellants submit that C.M.Appl. No.48 of 2015 was filed inadvertently incorporating therein the son and daughter of Late Sushila Debnath, who cannot be termed as claimants for the death of Kamini Mohan Debnath. The present petitioners, therefore, prayed for striking out order dated 02.02.2015 passed in C.M.Appl. No.48 of 2015 and submitted that the original appellant Nos.1, 3, 4 and 5 shall continue as the appellants and simply prayed for striking out the name of appellant No.2, Sushila Debnath because of her death.

For the death of Kamini Mohan Debnath because of accident, his legal representatives, i.e., his wife, mother and children filed the claim case. Since the mother has already died, the rest of the claimants, who are the appellants of the present appeal, shall continue to insist the appeal and after the death of mother, any other legal representative of the mother cannot naturally be a claimant for compensation except that of assets left by the deceased. I find justification in the prayer made in the present petition.

Mr. Dutta, learned counsel for the petitioners submits that because of misunderstanding C.M.Appl. No.48 of 2015 was filed and moved before this Court and consequently, order dated 02.02.2015 was passed. He, therefore, prays for recalling that order.

In view of the submission made by Mr. Dutta, learned counsel, which is not opposed by other side, the order dated 02.02.2015 passed in C.M.Appl. No.48 of 2015 is recalled. The names incorporated as appellants pursuant to order dated 02.02.2015 be deleted. The name of appellant No.2, Sushila Debnath, as prayed for, be struck of being dead. Other four appellants shall, therefore, continue the appeal.

Necessary correction may be made by the Registry in the cause title of MAC APP No.25 of 2002 and the appeal may be placed before this Court for order on **24.04.2014**.

The C. M. Application accordingly stands disposed of.