

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No.992 of 2018

Sheikh Aabid S/o Late Sheikh Ismail, aged about 47 years, R/o – Shankar Chowk, Nayapara, Police Station – Gole Bazaar, Raipur, District Raipur (CG) (Applicant) [Legal Heirs of Late Sheikh Ismail (died)]

On behalf of Sheikh Ismail S/o Sheikh Ibrahim, aged about 62 years, R/o Shankar Chowk, Nayapara, Police Station Gole Bazaar, Raipur, District Raipur (CG) [Appellant (died), after passing the award of the Hon'ble High Court, the appellant died]
 ---- Petitioner

Versus

1. M/s Shukla Saw Mill, through Harish Shukla, S/o Amarnath Shukla, aged about 30 years, R/o Bajrang Chowk, Kumhari, District Durg (CG) (Non-applicant No.2)
2. The ICICI Lombard General Insurance Company Limited, ICICI Towers, Bandra Kurla Complex, Bandra (East), Mumbai, through its Authorized Officer/Legal Manager, ICICI Lombard General Insurance Company Limited, Office – 3rd Floor, Lalganga Shopping Mall/Complex, G.E. Road, Raipur, Tahsil & District Raipur (CG) (Non-applicant No.2)

Respondents

For Petitioner : Mr.Govind Dewangan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28.11.2018

1. Claimant-Sheikh Ismail was granted compensation under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called as “the Act of 1988”) by the Chief Motor Accident Claims Tribunal, Raipur in Claim Case No.17/2008 to the extent of ₹ 2,52,800/- along with 6% interest from the date of claim application till realization of the compensation, which was appealed by the claimant as well as Insurance Company. This Court in Misc. Appeal (C) No.1120 of 2008 dismissed the appeal filed by the Insurance Company. However, in Misc. Appeal (C) No.1199 of 2008 filed by claimant-

Sheikh Ismile enhanced the compensation to the extent of ₹ 8,13,500/- and said compensation was deposited by the Insurance Company. In the meanwhile, on 21.11.2017 original claimant-Sheikh Ismail died. The petitioner herein made an application on 23.7.2018 for disbursement of the amount stating that he is only legal representative of Sheikh Ismail and therefore, amount of compensation be paid to him. That application was rejected by learned Claims Tribunal on the ground that succession certificate is required. Against which, this writ petition has been filed.

2. Mr.Govind Dewangan, learned counsel for the petitioner, would submit that the Claims Tribunal is absolutely unjustified in rejecting the application for obtaining succession certificate.
3. I have heard learned counsel appearing for the petitioner and gone through the record with utmost circumspection.
4. The question for consideration in this writ petition is whether succession certificate is necessary for disbursement of compensation amount. Section 214 (1) (a) & (b) of the Indian Succession Act, 1925 (hereinafter called as "the Act of 1925") states as under:- .

"214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons. (1) No Court shall-

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof, or

(b) proceed, upon an application for a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by person so claiming of

(i) a probate or letters of administration evidencing the grant to him of administration to be estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator-General's Act, 1913 (3 of 1913), and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate act, 1889, or

(v) a certificate granted under Bombay Regulation No. VIII of 1827, and if granted after the first day of May, 1889 having the debt specified therein.”

6. Under Section 214(1)(a) of the Act of 1925 when the suit is for recovery of a debt filed by the representatives of a deceased person, a succession certificate is necessary. Similarly, under Section 214 (1)(b) of the Act of 1925, in an execution petition to execute the decree for recovery of a debt, a certificate is necessary.

7. In the matter of Rukhsana (Smt.) and others v. Nazrunnisa (Smt.) and another¹, the Supreme Court has held that succession certificate as envisaged under the Indian Succession Act was only granted in respect of “debts” or “Securities” to which the deceased was entitled.

8. In the matter of Resilikutty Chalo v. State of Kerala², the

1 2000 AIR SCW 4941

2 AIR 1999 Ker 56

Kerala High Court has held that reference under Section 18 of the Land Acquisition Act for compensation is not a proceeding for recovery of debt, therefore, succession certificate need not be produced under Section 214(1)(b) of the Act, 1925.

9. In the matter of **Akhtar Bibi and others Vs. United India Insurance Co. Ltd.**³, the Gujarat High Court has laid down the similar proposition in paragraph 7 of its order.

10. Since the compensation is not “debt” or “security”, therefore, succession certificate is not required to be produced for obtaining the amount of compensation under the provisions of the Motor Vehicles Act, 1988.

11. This Court in **Priyanka & others v. Sakharam & others**⁴ reiterated the principle that compensation is not “debt” or “security”, therefore, succession certificate is not required to be produced for obtaining the amount of compensation under the provisions of the Motor Vehicles Act, 1988.

12. Reverting to the facts of the present case, it is quite vivid that learned Claims Tribunal has completely failed to appreciate the principle of law laid down by this Court in **Priyanka** (supra) in which it has clearly been held that compensation is not debt or security and no succession certificate is required for obtaining the amount of compensation granted under the provisions of the Motor Vehicles Act, 1988 and distinguished the said decision on the ground holding that in that case out of several claimants, one

³ 2008 (4) T.A.C. 885 (Guj.)

⁴ 2018(2) C.G.L.J. 458

claimant had died and in the present case, sole claimant had died, therefore, succession certificate is required, which is clearly impermissible in law. The principle of law enunciated in the judgment has to be noticed, as such, learned Claims Tribunal has distinguished the judgment totally on unsustainable grounds and thereby directed the petitioner to produce succession certificate particularly when till that date, no third party has raised any claim to amount of compensation.

13. In view of above, the impugned order is set aside. The matter is remitted to the Claims Tribunal to consider that application for disbursement afresh in accordance with law. The petitioner will file affidavit that he is only legal representative of claimant-Sheikh Ismail and he has no brother or sister, he will also produce proof of identity. On being satisfied, the Claims Tribunal shall proceed in accordance with law.

14. Accordingly, the writ petition is allowed to the extent indicated hereinabove. A copy of this order be sent to the Chief Motor Accident Claims Tribunal, Raipur for compliance as well as as Presiding Officer of said Tribunal for information. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-