THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.17 OF 2017

JUDGMENT:

This Civil Miscellaneous Appeal, under Order 43 Rule 1 of CPC read with Section 384(1) of Indian Succession Act, is filed by the appellants seeking to set aside the order, dated 24.09.2016 passed in Succession O.P.No.37 of 2013 by the Agent to Government at Khammam, to the extent of granting 30% of death and retirement benefits in favour of third respondent.

2. Heard the learned counsel for the appellants, learned counsel for respondent No.3 and perused the record.

3. Admittedly, appellant Nos.2 to 4 are the daughters of the deceased-Gudipudi Satya Deva Kanaka Raj and appellant No.1. Respondent No.3 is the so-called second wife of the deceased. She has begotten a son *viz.,* G.Santhosh Kumar through the deceased. There is no much denial with regard to the factual aspects.

4. Having considered the relationship between the parties to the litigation, the learned Agent to the Government at Khammam has passed the following order:

> "In view of the above, it is hereby ordered to receive the death benefits of the deceased from the RTC authorities by the 1st petitioner on behalf of her children i.e., 1) Gudipudi Ramadevi, 2) Gudipudi Sahiti, and 3) Gudipudi Suchithra @ 70% and the respondent No.3 to receive on behalf of her son Gudipudi Santhosh Kumar @ 30%.
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> Accordingly, the respondent Nos.1 and 2 pay the death benefits of the deceased Gudipudi Satya Deva Kanaka Raj @ 70% to the 1st petitioner and 30% to the 3rd respondent herein."

5. As there is no legitimate marriage between the deceased and respondent No.3, the learned Agent to the Government at Khammam is justified in not granting any amount to respondent No.3, the so-called second wife of the deceased. However, considering the fact that appellant Nos.2 to 4 are the children of appellant No.1 through the deceased and Mr.G.Santosh Kumar, is the son of respondent No.3 through the deceased, the impugned order dated 24.09.2016, is modified as follows:-

"Appellant Nos.2 to 4 and G.Santhosh Kumar are entitled to receive the death benefits of the deceased payable by RTC equally through their respective mothers".

6. With the above modification, the Civil Miscellaneous Appeal is disposed of.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

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Dr. SHAMEEM AKTHER, J

Date: 22.11.2019
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