

07.12.2023  
Sl. No.6(DL)  
srm

**C.O. No. 3299 of 2022**  
**Smt. Koli Sardar & Anr.**  
**Versus**  
**Minor Hiranyakshi Sardar & Ors.**

Md. Nure Zaman,  
Mr. Jahangir Badsha  
...for the Petitioners.

Mr. Soumik Ganguli  
...for the Opposite Party Nos.1 & 2.

Mr. Sukumar Bhattacharya,  
Ms. S. Sarkar  
...for the Opposite Party No.3.

The revisional application arises out of an order dated April 21, 2022 passed by the learned Civil Judge (Senior Division), Additional Court, Bankura, in Miscellaneous Appeal No.4 of 2018. The said miscellaneous appeal arose out of an order dated January 6, 2018 passed in Title Suit No.68 of 2017 by the learned Civil Judge (Junior Division), 1<sup>st</sup> Court, Bankura.

By the order impugned, the learned lower appellate court disposed of the miscellaneous appeal by allowing the prayers of the opposite party Nos.1 and 2. The court directed that the defendants be restrained from denying the status of the appellants (opposite party Nos.1 and 2), and the

defendants in the suit and for be further restrained from dealing with the post-death benefits of Dr. Sardar, who was an employee under the R L TRI, Gouripur Hospital, Bankura.

Md. Nure Zaman, learned Advocate for the petitioners submits that the petitioner No.1 is the legally married wife of the deceased and the petitioner No.2 is the son of the deceased. The plaintiffs claim to be minor daughters of the deceased and are represented by the natural guardian of Smt. Bhyagabati Sardar, who allegedly claimed to be married to the deceased, during the subsistence of the marriage between the petitioner No.1 and the deceased.

This Court is of the view that the status of the minors, who claim to be daughters of the deceased, shall be decided in the suit. The plaintiffs claim status as daughters. The petitioners are within their right to deny the status of the plaintiffs. The claim and counter claim will be decided in the suit. With regard to the hold on the entire death benefits by the order passed in the miscellaneous appeal, this Court is of the view that, at best, the opposite party Nos.1 and 2 are entitled to the death and other benefits of the deceased, but not of the entire share but of the total 50% share. Even in the Motor Accident Claims (MACC) Case the petitioners had been transposed as claimants.

The order impugned indicates that the learned court below was persuaded by the logic that if the death benefits were not protected by an order of injunction, the suit would become infructuous and ultimately if the plaintiffs were successful, they would be denied their legitimate share in their father's death benefits. The main reliefs claimed in the plaint also do not include a prayer for declaration that the defendant Nos.1 and 2 do not have any interest and claim over the property of the deceased. The only injunction that was prayed was that the entire retirement benefits should not be usurped by the defendant Nos.1 and 2. The learned lower appellate court ought to have taken into account such prayers and restrained partial disbursement.

However, this Court finds that, at best, even if the suit succeeds, the plaintiffs can claim 50% of the shares. The remaining 50% share fall in the claim of the petitioners' herein/defendant Nos.1 and 2.

Under such circumstances, the order impugned is set aside. The defendant Nos.1 and 2 in the suit shall be restrained from dealing with 50% share of the death benefits of Dr. Sardar, which shall remain in the custody and control of the defendant No.3 till the disposal of the suit. The employer shall keep the amount in a renewable fixed deposit in a nationalized

bank so that the amount will not remain idle and the same can fetch some can fetch some interest, until the issue is decided finally. With regard to the other 50% share, in all the death benefits, the petitioners are at liberty to approach the employer for disbursement of the same, subject to such terms and conditions and compliance necessary. An undertaking shall also be filed that such acceptance will be subject to the result of the suit. The remaining 50% share shall be disbursed by the defendant No. 3 in accordance with the outcome of the suit. The family pension, if available the same shall be governed by the service rules and the employer shall be guided by the same and this order shall also be applicable in such case.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**