

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 889 of 2022

(FMAT 1343 of 2016)

Ashoke Bagdi @ Putu Bagdi & Anr.

Vs

Jayanta Banerjee & Ors.

For the Appellants : Mr. Ali Imran Shah.

**For the Respondent/
Insurance Company** : Mr. Rajesh Singh.

Hearing concluded on : 12.06.2024

Judgment on : 21.06.2024

Shampa Dutt (Paul), J.:

1. The present Appeal has been preferred against the Judgment and/or order dated 05.05.2016 passed by the Judge, M.A.C. Tribunal, 4th Court, Additional District and Session Judge, Suri, Birbhum in MAC Case No. 29 of 2012 **under Section 163A of the Motor Vehicle Act.**
2. **The facts of the case is as follows:-**

That on 06.01.2012 about 10.45 hrs, the victim was traveling by the Bus being no. WB-53-0939 from Itagoria to Suri Bus Stand and suddenly the driver applied brake near Suri Bus Stand and the victim fell down from the Bus and sustained grievous injury. She was forwarded to Suri Sadar Hospital and succumbed to her injuries on that date. It was caused due to rash and negligent act of the driver of the vehicle being no. WB-53-0939. She was aged about 50 years and being a day labour earned Rs. 3,000/- per month. The sole claimant of the deceased being her husband came before the Tribunal claiming compensation to the tune of Rs. 3,50,000/- against Jayanta Banerjee and Ritwick Banerjee, the owners of the said Bus and the National Insurance Company Ltd. the insurer of the Bus.

The owner of the Bus did not participate in the hearing of the case. The O.P., National Insurance Company Ltd., the insurer of the offending vehicle has opposed the prayer by a written statement denying the claim and allegation of the petitioner as well as authenticity of the driver has been denied. It is also stated that the deceased Rati Bagdi was not the legally married wife of the original claimant Ajit Bagdi and therefore the heirs of Ajit Bagdi are not entitled to get any compensation, as the case originally had been

instituted by Ajit Bagdi and after his death, his children by another person have been substituted.

3. The original claimant, Ajit Bagdi was examined as P.W.1 and he deposed that he was the sole legal heir of the victim, being her husband, there being no issue out of the said wedlock. Relevant documents were exhibited. Charge Sheet has been marked exhibit 2. Exhibit 4 is the Post Mortem Report. It shows that the victim died in a road traffic accident.
4. The offending vehicle is WB-53-0939 and had a valid insurance.
5. The present claimants are the legal heirs of the original claimant but not of the victim and on such finding the Learned Tribunal dismissed the claim.
6. **Hence the appeal on the following ground:-**

That the legal heirs of the original claimant being his son and daughter from his second wife are entitled to the compensation to which the original claimant was entitled under the law as the victim had no other legal heirs and the Motor Vehicles Act being a beneficial legislation.

7. **The Learned counsel for the claimants/appellants has argued as follows:-**

That Section 16(3) of the Hindu Marriage Act, 1955, governs the inheritance rights of illegitimate children. As per Section 16(3), illegitimate children are only entitled to the property of their parents and not of any other relation. Apart from Hindus, the law is also applicable to Sikhs, Jains and

Buddhists. This was interpreted as illegitimate children having the right in their parents' self-acquired property and not in **ancestral property**.

It is further submitted that in the case of **Bharatha Matha & Another Versus R Vijaya Renganathan & Others (2010)** and the case in **Jinia Keotin Vs Kumar Sitaram (2003)**, the apex court had also taken the stand that children born out of void marriages were not entitled to claim ancestral property of their father and could only stake a claim in his self-acquired property.

But the Supreme Court, however, held that illegitimate children have the right in their parent's self-acquired as well as ancestral properties under the Hindu Marriage Act while giving its verdict in **Revansiddappa & Other Versus Mallikarjuna & Others in 2011**.

It is further stated that the relationship between the parents may not be sanctioned by law, but the birth of a child in such a relationship has to be viewed independently of the relationship of parents. A child born in such a relationship is innocent and entitled to all the rights, which are given to other children born in valid marriages. This is the crux of Section 16(3), a bench of justice GS Singhvi and Justice A.K. Ganguly ruled.

The Bench further held that:-

“If they were declared legitimate, then, they cannot be discriminated against and they will be on a par with other legitimate children and be entitled to all the rights in the property of their parents, both, self-acquired and ancestral... We find it interesting to note that the legislature has advisedly used the word ‘property’ and has not qualified it with either self-acquired property or ancestral property. It has been kept broad and general.”

The SC, however, ruled that illegitimate children would only be entitled to a share in their parents' property,

but in case of joint family property, they cannot claim it on their own.

8. Section 15(1)(b) of the Hindu Succession Act, 1956 has also been relied upon by the learned counsel for the claimant.

9. Section 15(1)(b) of the Hindu Session Act, 1956:-

“15. General rules of succession in the case of female Hindus

(1)The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a)

(b)secondly, upon the heirs of the husband;”

10. The Supreme Court in ***Revanasiddappa & Anr. vs Mallikarjun & Ors., in Civil Appeal No. 2844 of 2011, decided on September 01, 2023***, held:-

“54. We now formulate our conclusions in the following terms:-

(i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child is born before or after the commencement of Amending Act 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

(ii) In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child ‘begotten or conceived’ before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

(iii) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in subsection (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

(iv) While construing the provisions of Section 3(1)(j) of the HSA 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA 1956. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 of the HMA would, for the purposes of Section 3(1)(j) of the HSA 1956, fall within the ambit of the explanation 'related by legitimate kinship' and cannot be regarded as an 'illegitimate child' for the purposes of the proviso;

(v) Section 6 of the HSA 1956 continues to recognize the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;

(vi) Section 6 of the HSA 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9 September 2005 by the Amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of sub-section (3) of Section 6 as amended, on a Hindu dying after the commencement of the Amending Act of 2005 his interest in the property of a

Joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a Joint Hindu family governed by Mitakshara law has been made the norm;

(vii) Section 8 of the HSA 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;

(viii) While providing for the devolution of the interest of a Hindu in the property of a Joint Hindu family governed by Mitakshara law, dying after the commencement of the Amending Act of 2005 by testamentary or intestate succession, Section 6 (3) lays down a legal fiction namely that ‘the coparcenary property shall be deemed to have been divided as if a partition had taken place’. According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;

(ix) For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

*(x) The provisions of the HSA 1956 have to be harmonized with the mandate in Section 16(3) of the HMA 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) **will not be entitled to rights in or to the property of any person other than the parents.** The property of the parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above.”*

11. Thus considering clause (iii) and (x) of paragraph 54 (K) of the judgment in ***Revanasiddappa & Anr. vs Mallikarjun & Ors. (Supra)***, the present Claimants/Appellants are not entitled to the claim in this case **as admittedly the victim in this case was not one of the parents of the substituted claimants/appellants herein.**
12. **The appeal being FMA 889 of 2022/FMAT 1343 of 2016 thus stands dismissed.**
13. The Judgment and/or order dated 05.05.2016 passed by the Judge, M.A.C. Tribunal, 4th Court, Additional District and Session Judge, Suri, Birbhum in MAC Case No. 29 of 2012 under Section 163A of the Motor Vehicle Act, being in accordance with law requires no interference and **is thus affirmed.**
14. All connected applications, if any, stand disposed of.
15. There will be no order as to costs.
16. Interim order, if any, stands vacated.
17. Copy of this judgment be sent to the learned Tribunal.

- 18.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)