2024:PHHC:169325

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-587-2006 (O&M)
Reserved on: 26.11.2024
Pronounced on: 10.12.2024

Kanwaljit Kaur and another

... Appellants

Vs.

Kartar Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.S. Panag, Advocate
for the appellants.

None for the respondents.

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HARPREET SINGH BRAR, J. (ORAL)

1. The instant regular second appeal is preferred by the appellants-defendants against the judgment and decree dated 03.09.2005 passed by learned Additional District Judge, Mansa, vide which the appeal preferred by appellants-defendants No.1 & 2 against the judgment and decree dated 18.01.2005 passed by learned trial Court, decreeing the suit filed by respondent No.1-plaintiff for declaration and mandatory injunction, was dismissed.

2. Succinctly, the facts are that appellant No.1 Kanwaljit Kaur is the

widow and appellant No.2 Ramandeep Kaur is the daughter of one Manjit Singh, who served in the Indian Army and died in service on 09.09.1999. Kartar Kaur i.e. respondent No.1-plaintiff was the mother of Manjit Singh. Upon the death of Manjit Singh, a sum of Rs.3,75,000/- payable by the Army Group Insurance Scheme was deposited in his bank account. As per the case of respondent No.1-plaintiff, she being the mother of Manjit Singh is entitled to an equal share along with appellants-defendants No.1 & 2, however, since the bank disbursed the entire amount to appellants-defendants No.1 & 2, who subsequently withdrew the entire amount, respondent No.1-plaintiff filed a suit for declaration to the effect that she be given one third of the amount, as she is one of the legal representatives of deceased Manjit Singh. She sought a mandatory injunction to that effect.

3. Upon notice, appellants-defendants No.1 & 2 appeared before learned trial Court and contested the suit. In their written statement, appellants-defendants No.1 & 2 contended that the suit filed by respondent No.1-plaintiff should have been in the nature of suit for recovery and that too, after affixing the requisite court fee. It was also pleaded that the Army Authorities have already decided the matter and have duly held that only appellants-defendants No.1 & 2 are entitled to claim the amount as payable by the Army Group Insurance Scheme. As such, the matter cannot be re-opened. All other averments were denied in *toto*. Consequently, as many as 02 issues were

framed by learned trial Court including the issue of relief.

4. Ultimately, the suit filed by respondent No.1-plaintiff was decreed in her favour and it was held that she is entitled to claim one third share in the amount i.e. Rs.1,25,000/- out of Rs.3,75,000/-. Resultantly, the appellants-defendants were held entitled to the remaining amount of Rs.2,50,000/-. Affronted by the observations of learned trial Court, appellants-defendants No.1 & 2 approached learned lower appellate Court, which upheld the findings of learned trial Court and dismissed the appeal. Aggrieved by the same, the appellants-defendants No.1 & 2 have come before this Court by way of regular second appeal.

5. In view of the judgments passed by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others, (2016) 6 SCC 157, Randhir Kaur Vs. Prithvi Pal Singh and others, (2019) 17 SCC 71*** and ***Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others, 2023 SCC Online SC 875***, questions of law are not required to be framed in second appeal before this Court, whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act. This Court has proceeded to adjudicate the present matter on the basis of rival contentions of the parties on merits.

6. Learned counsel for the appellants vociferously contended that learned Courts below have not taken into account the law as laid down by this

Court in ***Smt. Saroj Vs. Smt. Murti Devi, AIR Punjab & Haryana 183,*** wherein it has been held that the widow of a soldier, who has died in service, and not his mother would be entitled to the amount as payable under the Army Group Insurance Scheme. Learned counsel further averred that although both the mother and the wife are class one heirs under the Hindu Succession Act, yet, it would not entitle the former to a share in the amount payable under the Army Group Insurance Scheme. The learned Courts below failed to take into consideration the Army Group Insurance Scheme rules specifically rules 9, 10, 11 and 43. Lastly, it was argued that it is an admitted case of the parties that the appellant No.1 is the nominee of deceased Manjit Singh. As such, only appellants-defendants No.1 & 2 are entitled to the full amount.

7. This Court, vide orders dated 21.10.2024 and 07.11.2024, directed the Registry to inform the counsel for the respondents of the next date of hearing. Office report indicates that the Registry duly informed the counsel for the respondents twice, yet there is no representation on their behalf. Resultantly, the Court has decided to proceed with the case on its own merits.

8. I have heard learned counsel for the appellants and perused the paper-book with his able assistance. The Army Group Insurance Scheme was introduced in January, 1976 under the authority of the Government of India, Ministry of Defence No.PCA/37586/AF/PC & JEC/9302/D (Pay/Service) dated 15.12.1975, to cater to the socio-economic needs of the army personnel

and their families. The main objects of the scheme being; (a) to provide speedy financial assistance to the families of those Army personnel, who may die while in service; (b) to provide lump-sum terminal benefit at the time of retirement; and, (c) to provide other benefits/assistance, as may be decided by the Board, to trustees from time to time.

9. Further, it is obligatory for all ranks to make a nomination for the Army Group Insurance Scheme. The instructions, which were prevalent at the time of passing of Manjit Singh, are contained in the letter No.A/56271/03/ AG/Ins(Coord) dated 30.03.1998 issued by Retired Brig. J.S. Kanwar, Director Adm. & Secy., Army Group Insurance Fund, the relevant paragraphs whereof are as follows :-

> *"1. On joining the Army, every AGI member is required to make a nomination when he/she joins the AGI scheme, nominating the person/persons to receive the death benefit in the event of the insurance claim being invoked. The Army Order 5/S/78 amended vide AO 33/81 lays down the procedure for nomination as under:*
> *(a) xxx xxxxxx*
> *(b) On Getting Married. The individual is required to make a fresh nomination in the name of his wife. Even if he has not made nomination in the name of his wife, his earlier nomination automatically becomes null and void when the individual gets married and the widow automatically becomes the nominee to receive death benefits.*
> *2. In the event of death of a member while in service; apart from the AGI benefits, a widow/beneficiary is entitled to DSOP/AFPP*

Fund balance, Pension/Special Family Pension and Gratuity. In addition, widow is also entitled to an ex-gratia grant in case of death in war like conditions or on internal Security duties from the Central Government and in some cases the State Governments also. Thus overall benefits to which a widow is entitled have increased manifold.

3. xxx xxxxxx

4. xxx xxxxxx

5. Accordingly the Board of Governors Army Group Insurance Fund during its Thirty Second meeting held on 22nd October, 1997 has considered and approved certain modifications to the AGI Nomination Rules, which are as follows:

(a) Married Personnel other than Lady Members. As per the revised AGI Nomination Policy applicable with effect from 22nd October, 1997, a married member, if he so desires may nominate his mother/father/minor brothers/unmarried sisters to receive a total share not exceeding 25 per cent of the total AGI benefits. The nomination for the balance share of minimum 75 per cent will have to be in the name of spouse and children only. In case a member desires to nominate his wife and children to receive 100 per cent of AGI benefits, he may do so.

6. There is no change to the other existing rules and regulations for AGI nomination. A revised AGI Nomination Form for married individuals incorporating the said provisions is attached. It should be ensured that the nomination is strictly made within the parameters of above revised policy. The Commanders at all levels should impress upon all ranks with due diligence that the available option be exercised with discretion keeping in mind their *socio-economic responsibility towards the family members."*

10. Moreover, Rule 9 of the Army Group Insurance Scheme stipulates the process for making nominations. For individuals, who are married, Rule 10 mandates that nominations may only be made in favour of specific categories of persons, namely:

a) The spouse (wife or husband);

b) Sons and daughters, which include stepchildren and legally adopted children.

11. Rule 11 further expands the list of eligible nominees to include dependent parents, brothers, and sisters. However, it imposes a restriction that the combined share allotted to these additional nominees must not exceed 20% of the total benefits. Rule 43 clarifies that the parents of the deceased are entitled to the benefits, only if the deceased passes away without a surviving spouse or children.

12. As per the material available on record, deceased Manjit Singh only nominated appellants-defendants No.1 & 2, as his nominees for receiving the sum, as payable under the insurance scheme. Since appellants-defendants No.1 & 2 are the sole and exclusive beneficiaries of the Army Group Insurance Scheme, they are entitled to the entire benefits of the scheme to the exclusion of other relatives and heirs. Therefore, the dispute that the mother being Class I heir should be held entitled to a share in the amount in equal shares, has no

force.

13. In view of the discussion above, present regular second appeal stands allowed and judgment and decree dated 03.09.2005 passed by learned Additional District Judge, Mansa, dismissing the appeal filed by the appellants and the judgment and decree dated 18.01.2005 passed by learned trial Court, decreeing the suit filed by respondent No.1-plaintiff for declaration and mandatory injunction, are set aside. Decree sheet be prepared accordingly.

14. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

10.12.2024
vishnu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No