

Pichammal and ors. Vs. the General Manager Claim Settlement Branch, Integral Coach Factory and ors.

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Court : Chennai

Decided On : Aug-25-1989

Reported in : (1989)2MLJ351

Appellant : Pichammal and ors.

Respondent : The General Manager Claim Settlement Branch, Integral Coach Factory and ors.

Advocate for Pet/Ap. : Mr. R. Ganesan

Judgement :

Bellie, J.

1. Defendants 2, 3 and 4 are the appellants in this second appeal. The suit was filed by one Lakshmi and her minor son Suresh. It appears one K. Nagarajan was working as Inspector of Works in Integral Coach Factory, Madras. On 17-5-1983 he died in a motor accident. The first plaintiff is his wife, second plaintiff is his minor son and defendants 3 and 4 are his major sons.

2. According to the plaintiffs, themselves and defendants 3 and 4 being the only legal heirs of K. Nagarajan, they are entitled to receive his Provident Fund amount, Group Insurance amount. Gratuity amount, Death Relief Fund and other amounts

standing to the credit of Nagarajan. They came to know that Nagarajan has nominated the second defendant, a widowed sister of his, to receive these amounts. But even though second defendant has been nominated to receive the amount the plaintiffs and defendants 3 and 4, being the legal heirs of Nagarajan, only are entitled to the amounts. While so the second defendant, is taking urgent steps to receive the amount to have it as her own, and if she is paid the amount the plaintiffs will not be able to get the same from her. It is further alleged that since defendants 3 and 4 are not willing to join with the plaintiffs, they have been impleaded as defendants 3 and 4. The General Manager, Claim Settlement Branch, Integral Coach Factory, Madras has been impleaded as the first defendant. The plaintiffs have claimed for a declaration that themselves and defendants 3 and 4 are entitled to the abovesaid amounts standing to the credit of Nagarajan.

3. The first defendant has stated in his written statement that Nagarajan had nominated the second defendant and defendants 3 and 4 to receive his Provident Fund Amount in the proportion of second defendant getting 70% and defendants 3 and 4 getting 15% each. Regarding Railway Insurance amount, Nagarajan has nominated the defendants 3 and 4 and his another widowed sister Meenakshi. Regarding other amounts there is no nomination.

4. The second defendant and defendants 3 and 4 in their common written statement have stated that only they are entitled to receive the amounts. They further stated that the suit is bad for non joinder of necessary party viz., Meenakshi who is one of the nominees with regard to Railway Insurance Amount.

5. The Trial Court (XIII Assistant Judge, City Civil Court, Madras) held that only in respect of the provident fund amount and railway insurance amount there are nominations and even with regard to these the nomination is only for the purpose of receiving the amount and the nomination does not give entitlement to the nominee of the amount. So holding it accepted the case of the plaintiffs that the plaintiffs and defendants 3 and 4 only being the legal heirs of the deceased Nagarajan, are entitled to the amount, and it has so declared.

6. Defendants 2,3 and 4 filed an appeal and the first appellate Court (IV Additional Judge, City Civil Court, Madras) found no reason to differ from the conclusion of the trial court, and therefore dismissed the appeal.

7. Now, in the second appeal only two questions have been formulated as substantial questions of law arising in the matter. One is that the finding of the lower courts that the nominations are made only to receive the amount and the nominees are not entitled to the money in exclusion of others is not correct. As regards this point, it is not in dispute that there is nominations only in respect of two amounts. In respect of provident fund amount the second defendant and defendants 3 and 4 have been nominated, and in respect of railway insurance amount Meenakshi and defendants 3 and 4 have nominated. There being no nomination with regard to other amounts naturally those amounts must go to the legal heirs of Nagarajan i.e., the plaintiffs and defendants 3 and 4. Now as regards nomination the trial Court as well as the first appellate Court have relied on a Supreme Court decision in 'Smt. Subbati Devi and Anr. v. Smt. Usha Devi : [1984]1SCR992 and Anr. decision of this Court in M.V. Krishnamoorthy and Anr. v. S. Anandalakshmi and two Ors. (1980)2 M.L.J.320 and held that the nominee will not have right in the amounts and the nomination is only for receipt of the amount.

Mr. R. Ganesan, learned Counsel for the appellants contends that both these decisions arose out of nominations made under Section 39 of the Insurance Act, 1938 whereas the present nomination is under Railway Establishment code and therefore both the decisions are not applicable to the present case. But I find no substance in this submission. In the Supreme Court Judgment though the matter relates to Section 39 of the Insurance Act, the effect of nomination has been generally discussed and then it has been held that nomination will not confer any right in the amounts and it is only for receipt of the amount from whom it is payable. The Supreme Court has stated as follows, as correctly noted in the head note:

A mere nomination made under Section 39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the

hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

The learned Counsel did not however make any attempt to point out any difference between Section 39 of the Insurance Act and the relevant provision is the Railway Establishment Code. Therefore there is no point in merely saying that the Supreme Court decision is not applicable to the present case. In view of the clear position of law enunciated by the Supreme Court only the plaintiffs and defendants 3 and 4 who are the legal heirs of the deceased Nagarajan are entitled to the amounts. The second defendant certainly cannot claim the amount. Defendants 3 and 4 inspite of their nomination have to share the amount along with the plaintiffs. Therefore, there is absolutely no reason to differ from the finding of both the courts below that only the plaintiffs and defendants 3 and 4 are entitled to all the amounts.

8. The other point formulated as substantial question of law is that the suit is bad for nonjoinder of Meenakshi. She is one of the nominees along with defendants 3 and 4 in respect of the railway insurance amount. Plaintiffs case is that only they and defendants 3 and 4 are entitled to the amount and none else. Meenakshi does not seem to have made any claim to the amount. In fact according to the plaintiffs only after the written statement was filed they know that she was one of the nominees in respect of railway insurance amount And as stated above, the position of law is that the amounts will not belong to the nominee and it will belong to the legal heirs of the deceased. This being the position, there is no merit in the argument that the suit is bad for non-joinder of Meenakshi as a party.

9. Learned Counsel would also argue that the court fee paid in the suit is insufficient and therefore the suit is not competent. As stated above only the above said two questions of law and no other question arise for consideration. Further the two Courts below have concurrently found that the court-fee paid is correct. Hence, I do not think it would be proper now to consider a point as regards sufficiency of court-fee paid.

10. Thus, in the result, I find no merit in the second appeal. Accordingly it is dismissed. There will be no order as to costs.

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