

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

Misc. Appeal No. 48 of 2015

Khalid Pervez
Versus
Ist. Additional District & Sessions Judge & another

Date of Hearing: 01.03.2018

Appellant: Through Mr. S. Tasawar Hussain Rizvi
Advocate.

Respondent No.2: Through Mr. Imtiaz Ahmed Shaikh Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.-This Miscellaneous Appeal is arising out of an order passed in Succession Misc. Application No.44 of 2011. Respondent No.2 filed a Succession Application under section 372 of Succession Act, 1925, subject matter of which is as under:-

i)	Shaheed compensation	Rs.20,00,000/-
ii)	Group Insurance	Rs. 1,75,000/-
iii)	National Police Fund	Rs. 5,000/-

	Total	Rs.21,80,000/-
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The subject Succession Application was maintained and disposed of by distributing the first part of claim i.e. Shaheed Compensation amongst the mother and father and rest of the amount was distributed in accordance with law of inheritance on P.R. bond. A commissioner was also appointed by the Additional District Judge who submitted his report on 30.05.2015. The father of the deceased has challenged the proceedings and order of the ADJ in this Misc. Appeal.

The point that requires consideration is whether the subject heads i.e. Shaheed Compensation Fund, Group Insurance and National Police Fund were the amounts left by the deceased and that could have been claimed during his life time and be considered as an asset and/or in the alternate was it an amount that was matured and payable after death.

I have heard the learned counsel for the parties and perused the material available on record.

Learned counsel for the appellant relied upon the judgment in the case of Federal Government v. Public at Large reported in PLD 1991 SC 750 and an unreported judgment of this Court in M.A. No.39 of 2016. He submitted that since it was not 'Tarka' or asset of the deceased, therefore, the Succession Application could not have been filed by respondent No.2. Both the learned counsel have however agreed that this was not the amount that the deceased could have claimed during his life time and hence not the assets left by the deceased to be distributed amongst the legal heirs.

Respondent's counsel however claimed that since the mother was also dependent upon her son therefore she is entitled for the amount in equal proportion.

Perusal of the definition of 'Family under Federal Employees' Benevolent Fund & Group Insurance Act, 1969 provides that:

"(5) "family" means,-

(a) ...

(b) the legitimate children, parents, minor brothers, unmarried, divorced or widowed sisters of the employee residing with and wholly dependent upon him."



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Admittedly, the respondent No.2 was divorced several years back and she got married with one Sadiq Hussain which whom she is living since years. The definition of 'Family' under the ibid Act thus in the above terms exclude the mother as being beneficiary as she was not dependent on her son; in fact she was dependent on her husband with whom she solemnized second marriage and is living with him. The word "residing with and wholly dependent upon him" is articulated with every relation defined in above provision i.e. 5b.

Besides above conclusion/observation, since the subject amount under aforesaid heads was not an asset of the deceased, the Succession Application could not have been filed by respondent No.2 and maintained by Court as such amount is to be distributed by the employer to the 'family' of the deceased strictly in terms of its limitation as provided under the law and the Court of Additional District Judge under Secession Act for the subject amount, which is not an asset of the deceased, had no role and/or jurisdiction under Successions Act.

In view of the above the appeal is allowed and the impugned order dated 17.09.2015 passed by I-Additional District & Sessions Judge Karachi Central is set aside.

Dated:

S. 3.18.
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Judge