

MISCELLANEOUS CIVIL

Before D. K. Mahajan, P. S. Pattar, JJ.

THE CONTROLLER OF ESTATE DUTY, PATIALA,—Appellant

versus

SMT. MOTIA RANI MALHOTRA,—Respondent.

Estate Duty Reference No. 1 of 1972.

November 19, 1973.

Estate Duty Act (34 of 1953)—Sections 2(15), 2(16) and 5—Person dying in an air-crash—Air Lines Corporation paying certain amount of compensation to the heirs of the deceased—Such amount—Whether forms part of the estate of the deceased and subject to estate duty.

Held, that under the provisions of sections 2(15), 2(16) and 5 of the Estate Duty Act, 1953, what can be charged to estate duty is that property which passes on the death of the deceased. When a person dies in an air-crash and the Air Lines Corporation pays compensation to the heirs of the deceased, the amount of the compensation comes into being only after the death of the deceased. It existed at time of the deceased. What is not in existence at all during the life-time of the deceased. What is not in existence at all during the life time of the deceased, cannot pass on his death. Hence the amount of compensation paid by an Air Lines Corporation on the death of a person in air-crash does not form the estate of the deceased and is not subject to estate duty.

Reference under section 64(1) of the Estate Duty Act, 1953 made by the Income-tax Appellate Tribunal (Chandigarh Branch) dated 27th December, 1971, for opinion to this Hon'ble Court on the following question of law in R.A. No. 99 of 1970-71 arising out of EDA No. 33 of 1968-69:—

“Whether on the facts and in the circumstances of the case, the sum of Rs. 42,000 received by the dependents was liable to estate duty ?”

D. N. Awasthy, Senior Advocate, with B. S. Gupta, Advocate, for the appellant.

M. M. Punchhi, Advocate (assuring to Mr. Bhagirath Dass, Advocate), for the respondents.

JUDGMENT

Judgment of the Court was delivered by:—

MAHAJAN, J.—The Income-tax Appellate Tribunal, Chandigarh Bench, has referred the following question of law for our opinion:

“Whether on the facts and in the circumstances of the case, the sum of Rs. 42,000 received by the dependents was liable to estate duty ?”

(2) Shri D. P. Malhotra was the Chief Engineer in the State of Jammu and Kashmir. He died on 7th February, 1966, in a plane crash near Banihal. On his death, his widow and sons were given Rs. 42,000 by the Indian Airlines Corporation (the carriers). The amount was subjected to estate duty by the Assistant Controller, Estate Duty, Jullundur, who observed:

"It is claimed in the account of the estate that the legal heirs of the deceased were given a sum of Rs. 42,000 as *ad hoc* compensation by the Indian Airlines Corporation because the deceased died in the accident while travelling as passenger of the Indian Airlines Corporation. Shri Dhawan claimed that this amount is exempt as this asset was not in existence at the time of death of the deceased and Shri Dhawan, therefore, claimed that it is not a property which passed on the death of the deceased. I have considered the contention of Shri Dhawan and I cannot agree to it. According to the definition of property under section 2(15), "property" includes any interest in property also and this definition clearly lays down that property includes any property converted from one species to another by any method.

In the above case, the deceased had certain rights as a fare paying passenger of the Indian Airlines Corporation. On account of this right, his legal heirs were given compensation of Rs. 42,000. Therefore, when the legal heirs were paid the compensation of Rs. 42,000 it was directly because the right of the deceased as a fare paying passenger which was converted into the right of the deceased to receive the above compensation. It, therefore, is obvious that the compensation received by the legal heirs was a property which existed in the lifetime of the deceased and passed on the death of the deceased because of his death. The amount is, therefore, includible in the estate of the deceased."

(3) The assessee then went up in appeal to the Zonal Appellate Controller. The Appellate Controller allowed the appeal and observed as follows:

"The last contention of the appellant is that a sum of Rs. 42,000 received as compensation by the deceased's heirs from the Indian Airlines Corporation should not have been included in the value of the deceased's estate because the said compensation was not receivable by the deceased, but was

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receivable by his heirs in the event of his death by accident during the course of his journey by the Indian Airlines aircraft and nothing would have been received had the deceased survived the air-crash which resulted in his death. In this connection the learned representative for the appellant also referred to Nanavati's Treatise on Estate Duty (1964 Ed. p. 190) wherein an opinion has been expressed on the basis of the decision in *Feay v. Barnwell* (1), that such a compensation to the deceased's heirs was not taxable. This interpretation seems to be correct because the compensation was not payable to the estate of the deceased and, therefore, could not form part of his estate to be assessed to Estate Duty. In my opinion, this amount should not have been included in the value of the deceased's estate. The sum of Rs. 42,000 included in this behalf is, therefore, deleted."

The Revenue then appealed to the Income-tax Appellate Tribunal, Chandigarh Bench. The Tribunal affirmed the decision of the Zonal Appellate Tribunal. The relevant observations of the Tribunal are as follows:

"Where a person dies but before his death, puts his property in such a manner that it will go to his descendants or heirs in a particular predestined manner determined by him, then the accountable person would be chargeable to estate duty. And it can be so taxed, if and only if, the property passes on death. If, however, as in the present case, the property is created on the death, then it cannot be subjected to tax for the simple reason that it does not pass on death."

The Department being dissatisfied with the decision of the Tribunal applied under section 64(1) of the Estate Duty Act (hereinafter referred to as the Act) requiring the Tribunal to state the question of law, set out above, for the opinion of this Court. This is how the matter has been placed before us.

(4) Mr. Awasthy, learned counsel for the Department, has very strenuously contended that the Tribunal as well as the Zonal Appellate Tribunal were wrong in holding that the amount of Rs. 42,000 did

(1) (1938)1 All. E.R. 31.

not form part of the estate of the deceased and, not liable to estate duty. The learned counsel's contention is that this amount passed on the death of the deceased to his heirs and, therefore, is liable to estate duty. Before proceeding to deal with the contention of the learned counsel, it would be proper to examine what actually had happened and whether this amount of Rs. 42,000 was in existence during any part of the life of the deceased? In the air-crash that took place, the deceased died. There is no evidence whether he died instantaneously or later. The fact of the matter is that he was found dead when the crash was discovered. As a result of that crash, under the Indian Carriage by Air Act, 1934, as adapted to internal flights, the heirs of the deceased were paid Rs. 42,000 as compensation. Therefore, the amount of Rs. 42,000 came into being only after the death of the deceased. It existed at no point of time either contingently or otherwise during the lifetime of the deceased. Section 5 of the Act is the charging section, section 2(15) defines "property", and section 2(16) defines "property passing on the death". These provisions are in the following terms:

- "5(1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land situate in the territories which, immediately before the 1st November, 1956, were comprised in the States specified in the First Schedule to this Act, and in the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry, which passes on the death of such a person, a duty called "estate duty" at the rates fixed in accordance with section 35.
- (2) The Central Government may, by notification in the Official Gazette, add the names of any other States to the First Schedule in respect whereof resolutions have been passed by the Legislatures of those States adopting this Act under clause (1) of Article 252 of the Constitution in respect of estate duty on agricultural lands situate in those States, and on the issue of any such notification the States so added shall be deemed to be States specified in the First Schedule within the meaning of sub-section (1)"

"2(15) "Property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any

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money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method.

Explanation 1.—The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression “property” shall include the debt or right created.

Explanation 2.—The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression “property” shall include the benefit conferred by the extinguishment of the debt or right.”

“2(16) “Property passing on the death” includes property passing either immediately on the death or after an interval, either certainly or contingently, and either originally or by way of substitutive limitation, and “on the death” includes “at a period ascertainable only by reference to the death.”

Thus keeping in view the provisions of section 5, section 2(15) and section 2(16) of the Act, what can be charged to estate duty is that property which passed on the death of the deceased. Therefore, the short question is: Did the sum of Rs. 42,000 pass on the death of the deceased? We fail to see how what was not in existence at all during the life time of the deceased could pass on his death. If this is kept in view, the case presents no difficulty. Mr. Awasthy's attempt in his very learned arguments has been to bring this property into being as if it existed at some point of time during the lifetime of the deceased, but we must say that he has been unable to convince us on this part of his argument. He drew our attention to sections 1-A and 2 of the Fatal Accidents Act, 1955, and contended that before this Act was brought on the statute book, there was no right available to the dependents of a deceased to sue for compensation for any personal injury to the deceased. This, in no way throws any light on the problem which we are called upon to solve.

(5) The learned counsel then proceeded to deal with the provisions of the Indian Carriage by Air Act, 1934, as adapted for inland carriage. Section 2 of this Act makes first schedule applicable to carriage by air, not being international carriage by air, and reference to an agent of the carrier includes a reference to a servant of the carrier. Sub-section (4) of this section states that notwithstanding anything contained in the Indian Fatal Accidents Act, 1855, or any other enactment or rule of law in force in any part of India, the rules contained in the First Schedule as applicable to carriage by air, not being international carriage by air, shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Second Schedule as applicable to carriage by air, not being international carriage by air, shall determine the person by whom and for whose benefit and the manner in which such liability may be enforced. This brings us to the first and the second schedules as adopted. The relevant rules 17 and 22 of the first schedule are in the following texts:

“17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.”

“22. (1) In the event of death of a passenger, or any bodily injury or wound suffered by a passenger which results in a permanent disablement incapacitating him from engaging in or being occupied with his usual business or occupation, the liability of the carrier for each passenger shall be Rs. 42,000, if the passenger be 12 or more years of age, and Rs. 21,000, if the passenger is below 12 years of age, on the date of the accident.

(1A) In the event of wounding of a passenger or any other bodily injury suffered by a passenger which results in a temporary disablement entirely preventing an injured passenger from attending to his usual business or occupation or duties, the liability of the carrier for each passenger shall be limited to a sum calculated at the rate of Rs. 40 per day for every day during which he continues to be so disabled or a sum of eight thousand rupees, whichever is less.

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- (2) In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of Rs. 80 per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value of the consignor at delivery.
- (3) As regards objects of which the passenger takes charge himself, the liability of the carrier is limited to Rs. 250 per passenger."

Rule 1 of the second schedule is in the following terms:

"The liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.

In this rule the expression "member of the family" means wife or husband, parent, step-parent, grand-parent, brother, sister, half-brother, half-sister, child, step-child, grandchild:

Provided that in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters."

So far as rule 17 of the first schedule is concerned, it merely makes the carrier liable. Rule 22 of the first schedule fixes the maximum liability of the carrier in the case of death and other bodily injury. Rule 1 of the second schedule lays down as to who can enforce the liability, and for whose benefit the liability be fixed on the carrier. In other words, it states that the members of a passenger's family as specified in Rule 1 to second schedule who have sustained damages by reason of his death are entitled to enforce the liability. In nutshell, these provisions lead to one and only one conclusion that this Act provides compensation to the members of the deceased's family. That is, on the death of a person by an accident in an aeroplane carrier, damages by way of compensation are provided for the members of his family. In the very nature of things, these damages arise after the man is dead. The Act under which the

amount in question was paid definitely provides for whom it is available in case of death of the passenger. If it was part of his estate passing on his death, it would pass on to his heirs other than those specified in the Act in case they are not in existence. But that does not happen. If the members of the family specified in the Act are not in existence, the payment has not to be made. The payment of compensation is for those and those only who are specified in the Act. This completely negatives Mr. Awasthy's contention that the amount is property capable of passing on death.

(6) Mr. Awasthy then contends that in case he suffers permanent or temporary injury, but does not die, he would be entitled to compensation under these provisions and from this, a conclusion is sought to be drawn that as the amount which he receives for permanent or temporary injury becomes part of his estate, similarly the amount that is paid as compensation to his heirs after his death by air-crash also becomes part of the estate of the deceased. There is a lot of difference between the two types of payments. In case of compensation received on account of permanent or temporary injury in an air-crash, the amount received by a person undoubtedly becomes a part of his estate, but then he is not dead and he does not become chargeable to the estate duty because during his lifetime, he may dissipate his estate and nothing may be left for the revenue to lay their hands upon on his death. However, if the compensation is received by the heirs of the person after his death in an air-crash, it cannot partake of his estate or form a part of his estate and it cannot be said to be his property which will pass on his death. We fail to understand the argument that when a person boards an aeroplane, he is, at that time, considered to create an estate or interest capable of passing after his death when compensation is received by his heirs in case of his death in the air-crash. The argument of the learned counsel, in nutshell, is without basis. Even by placing the widest construction on the statute, this result cannot be achieved. The view we have taken finds ample support from the view expressed by the author of "Green's Death Duties" (Third Edition). Reference in this connection may be made to the following passage at page 21:—

"Damage or compensation moneys, payable in respect of the death of the deceased under the Fatal Accidents Act, 1846 (Lord Campbell's Act), the Employers Liability Act, 1880, the Carriage by Air Act, 1932, or the Personal Injuries (Civilians) Scheme, 1940, are not part of the estate passing on his death....."

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Dymond on "Death Duties" (12th Edition) has dealt with this matter as follows:—

"No Death Duty is chargeable in respect of purely voluntary payments from outside sources to the representatives or relatives of a deceased person. Strictly, this is not an *exemption*, the position is that the amounts are not within the taxing provisions. Among the payments which escape liability on this and analogous grounds are:—

- (i) Sums recovered by way of compensation on deaths by accident under the Workman's Compensation Acts, the Employers' Liability Act, 1880, the Fatal Accidents Act, 1846, or the Carriage by Air Act, 1932. . . ."

(7) The view we have taken of the matter also finds support from the decisions of the Jammu and Kashmir High Court in *Controller of Estate Duty v. Kasturi Lal Jain* (2), and *Controller of Estate Duty v. Mohini Devi Muju* (3). Mr. Awasthy's criticism that the Indian cases relied upon in *Kasturi Lal Jain's case* are not helpful is to a certain extent, justified. But the basis of the decisions is the arms which we have adopted on first principles. We are in respectful agreement with that decision. It will, therefore, serve no useful purpose to travel that ground all over again.

(8) This brings us to the second contention of Mr. Awasthy, based on section 15 of the Act, which is in the following terms:—

"An annuity or other interest, purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death.

Explanation.—The extent of the beneficial interest must be ascertained without regard to any interest in expectancy which the beneficiary may have had therein before the death."

(2) I.T.R. No. 2 of 1973 decided by J.&K. High Court on 30th August, 1973.

(3) I.T.R. No. 5 of 1973 decided by J.&K. High Court on 30th August, 1973.

According to the learned counsel, by purchasing the air ticket, the deceased provided an interest which fructified on his death. In other words, when he boarded the plane, he boarded it with the certain idea that it must crash and he must die—an assumption we are not prepared to make. Section 15 provides for those types of cases where the owner of property tries to dissipate his property in such a way that it passes on to his heirs, but without suffering estate duty. It does not contemplate the type of cases with which we are dealing. However, on this matter also, the observations of Green are very pertinent and may be read with advantage. They are to the following effect:—

“It is not considered that a deceased person ‘provided’ any damages or compensation which may be payable in connection with his death under the Fatal Accidents Act, 1846 (Lord Cambell’s Act), the Employers Liability Act, 1880, the Carriage by Air Act, 1932, or the Personal Injuries (Civilians) Scheme, 1940.”

In this view of the matter, we are not impressed with the contentions of the learned counsel that section 15 of the Act brings the amount of Rs. 42,000 to the charge of an estate duty.

(9) Mr. Awasthy then referred to *K. C. Manavedan v. Deputy Controller of Estate Duty* (4). His contention is that it is not necessary that the deceased should have interest *in presenti* or controlling power on property during his lifetime. This may or may not be so. The fact of the matter is that in *Manavedan’s case*, the property which was sought to be subjected to estate duty was in existence. Whereas in the case with which we are dealing, the property was not in existence as to pass on death, while in the case referred to by Mr. Awasthy, it was in existence and passed on the death of the deceased. Therefore, this decision does not help the contention of the learned counsel.

(10) For the reasons recorded above, we answer the question referred to us in the negative, that is, in favour of the assessee and against the Department. The assessee will get his costs which are assessed at Rs. 250.

K.S.K.

(4) (1965) 55 I.T.R. (Supp.) 36.