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When the decisions of our own High Court are almost unanimous as regards a certain point it is unnecessary to consider what the views of the other High Courts are on that point. We may, however, remark that the views of the Bombay and Calcutta High Courts are in accordance with our view. In *Sadasiva Bin Maharu* v. *Narayan Vithal*(1), the point before us was specifically decided and in *Kailash Chandra Tarfdar* v. *Gopal Chandra Poddar*(2), a Full Bench of the Calcutta High Court held the same view as that in *Lakshmanan Chettiar* v. *Kannammal*(3). There are conflicting views in the decisions of the Allahabad High Court. The Patna High Court no doubt takes a different view.

On a careful consideration of the cases on the point we have no hesitation in answering the question in the affirmative. The appeal fails and is dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Jackson.

1926, October 27.

VITTAL RAO AND ANOTHER, MINORS, BY GUARDIAN MADHURAMMA (PETITIONERS), APPELLANTS,

v.

R. HANUMANTHA RAO AND 7 OTHERS (RESPONDENTS), RESPONDENTS.*

Sec. 4, Succession Certificate (Act VII of 1889)—Insurance money payable after death, whether a "debt" due to the deceased within sec. 4.

Under a policy of insurance, the policy amount was payable to the assured if he attained a stated age or to his representatives

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* Appeal against Order No. 510 of 1925.

(1) (1911) I.L.R., 35 Bom., 452. (2) (1926) 43, C. L.J., 345.

(3) (1901) I.L.R., 24 Mad., 185.

or assigns if he died earlier. The policy was not assigned to any one. On a claim for the policy amount by the son of the assured who died before the stated age,

Held, that the amount was a 'debt' due to the deceased within section 4 of the Succession Certificate Act. *Banchharam Mazumdar* v. *Adya Nath Battacharjee* (1909) 13 C.W.N., 966 I.L.R., 36 Calc., 936 (F.B.), followed.

APPEAL against the Order of the District Court of Bellary, dated 3rd August 1925, in O.P. No. 14 of 1925. One Lakshmana Rao had effected a policy of insurance on his life, the amount of which was payable to 'him if he attained a stated age' or 'to his representatives or assigns' if he died earlier. The policy was not assigned to any one and on the death of the assured before the stated age, the petitioners, his minor sons, applied under Succession Certificate Act for a certificate to collect the amount of the policy. The respondents were other relations of the deceased, who did not oppose the application either in the original Court or in the High Court. The District Judge refused the application holding that as the policy amount did not become payable to the *deceased*, on account of his death before the stated age, it was not a '*debt*' *due to the deceased*. The petitioners therefore filed this appeal.

K. Srinivasa Rao for appellants.—The amount due under the insurance policy is a "debt" within the meaning of section 4 of the Act; see *Mathew* v. *Northern Assurance Company*(1), *Visvanath P. Vaidya* v. *Mulraj Khatau*(2), *Oriental Government Security Life Assurance, Limited* v. *Venteddu Ammiraju*(3). The last case was reversed by the Full Bench only on the question of the application of the Married Women's Property Act in *Balamba* v. *Krishnayya*(4) but was approved on the present point. *Srinivasa Chariar* v. *Ranganayaki Ammal*(5) and *Charusila Dasi* v. *Jyotish Chandra Sirkar*(6) relied on by

(1) (1878) 9 Ch. D., 80.
(2) (1911) 13 Bom. L.R., 590.
(3) (1912) I.L.R., 35 Mad., 162.
(4) (1914) I.L.R., 37 Mad., 483 (F.B.) at 506.
(5) (1915) 32 I.C., 991.
(6) (1916) 33 I.C., 157.

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the lower Court proceed on the applicability of the Married Women's Property Act and so do not touch the present question. The Full Bench in *Bancharam Mazumdar* v. *Adya Nath Battacharjee*(1) is in my favour rather than against me.

No one appeared for the respondents.

JUDGMENT.

This is an appeal against the refusal of the District Judge of Bellary to grant a succession certificate in order that the petitioners might recover a sum of money due on a life insurance policy. The learned Judge held, with reluctance, that the moneys did not form a debt under section 4 of the Succession Certificate Act. The respondents are *ex parte* and we have not had the advantage of hearing their arguments; but we have examined the cases relied on by the learned District Judge in support of the view that moneys due from an insurance company under a policy of insurance are not debts within the meaning of section 4 of the Succession Certificate Act. The learned Judge deals with the decision in *Oriental Government Security Life Assurance, Ltd.* v. *Venteddu Ammiraju*(2) and the decision of the Full Bench in *Balamba* v. *Krishnayya*(3) as confined to the applicability of section 6 of the Married Woman's Property Act. But *Oriental Government Security Life Assurance, Ltd.* v. *Venteddu Ammiraju*(2) clearly lays down that the policy is part of the estate of the deceased and that the heirs are entitled to the payment of the money under it after his death. No doubt a question was raised in *Oriental Government Security Life Assurance, Ltd.* v. *Venteddu Ammiraju*(2) as to the Married Woman's Property Act, but in *Balamba* v. *Krishnayya*(3) in which it is said that *Oriental Government*

(1) (1909) I.L.R., 36 Calc., 936; 13 C.W.N., 966.
(2) (1912) I.L.R., 35 Mad., 162. (3) (1914) I.L.R., 37 Mad., 483 (F.B.),

Security Life Assurance, Ltd. v. *Venteddu Ammiraju*(1) was overruled it must be observed that the only question on which *Oriental Government Security Life Assurance, Ltd.*, v. *Venteddu Ammiraju*(1) appears to have been overruled is the question of the Married Woman's Property Act, because at page 506 Sir ARNOLD WHITE, Chief Justice, said

"if the view taken by the learned Judges as to the Married Woman's Property Act was right, I should agree with their conclusion in that case that no cause of action arose to the beneficiaries and that the policy moneys formed part of the estate of the assured notwithstanding that under the contract the money was payable to the beneficiaries in default of trustees."

Another case cited by the learned District Judge, *Srinivasa Chariar* v. *Ranganayaki Ammal*(2) clearly turned on the applicability of section 6 of the Married Woman's Property Act. The dictum in *Charusila Dasi* v. *Jyotish Chandra Sirkar*(3) relied on by the Judge must have reference to the facts of the case which it decided and it is at least doubtful as to whether this also is not a case under the Married Woman's Property Act, as the assured had constituted his widow his nominee for the receipt of the money. In so far as the learned Judge has held or may be taken to have held that an insurance policy is not contemplated by the Succession Certificate Act in that it is not a debt due to the deceased it may be pointed out that in *Mathew* v. *Northern Assurance Company*(4) it was held that the insurance company is a debtor, and in *Visvanath P. Vaidya* v. *Mulraj Khatau*(5) the learned Judges held that the policy moneys are debts. Since the hearing of the appeal the Full Bench ruling of the Calcutta High

(1) (1912) I.L.R., 35 Mad., 162. (2) (1915) 32 I.C., 991.
(3) (1916) 33 I. C., 157. (4) (1878) 9 Ch. D., 80.
(5) (1911) 13 Bom. L.R., 590.

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Court in *Banchharam Muzumdar* v. *Adya Nath Bhattacharjee*(1) has come to our notice which held that the ordinary meaning of the word "debt" is to be ascribed to the language of section 4 of the Act in question and that it applies to a sum of money which does not become payable till after the death of the creditor and that in such a case the heirs of the creditor cannot obtain a decree without the production of a certificate under the Succession Certificate Act. The case in *Abdul Karim Khan* v. *Maqbul-un-nissa Begam*(2) which was a question of dower was referred to with approval. These two cases fortify the opinion we had previously formed at the hearing of the argument that it may be legitimately inferred from the decisions that a succession certificate may be granted in respect of the money due under a policy of insurance. In fact the decision of the Calcutta High Court seems to set the matter at rest. In this view the decision of the learned District Judge was wrong and his order must be set aside and the case remanded to him to be dealt with according to law in the light of the above observations.

N.R.

(1) (1909) I.L.R., 36 Calc., 936; 13 C.W.N., 966, F B.
(2) (1908) I.L.R., 30 All., 315.