

**(2011) 09 GUJ CK 0135**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No. 5574 of 2011

Champaben Balvantgiri Goswami

APPELLANT

Vs

Vaibhav Cotton Industries and Another

RESPONDENT

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**Date of Decision :** 08-09-2011

**Acts Referred:**

**Citation :** (2011) 09 GUJ CK 0135

**Hon'ble Judges :** Ravi R. Tripathi, J

**Bench :** Single Bench

**Advocate :** Kishor M. Paul, for the Appellant; Dakshesh Mehta, for Respondent 2, for the Respondent

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## **Judgement**

Ravi R. Tripathi, J.—At the request of learned Advocate Mr. Paul for thePetitioner, the matter is taken up for final hearing, though it is listed at Sr. No. 41 in the Final Hearing Board.

2. Heard learned Advocate for the Petitioner, who is an unfortunate mother of the deceased - Nileshgiri, who diedin an accident. By Workmen Compensation (Fatal) Distribution Application No. 35 of 2007, dependents of deceased Nileshgiri Balvantgiri Goswami approached theWorkmen Compensation Commissioner for payment of the amount of compensation deposited by Respondent No. 2 here in, as Respondent No. 1, being the employer with whom the deceased son of the Petitioner was serving, had filled in the required form and on verification of the contents there of, Respondent No. 2 deposited the amount with the Workmen Compensation Commissioner.

2.1 An amount of Rs. 2,92,829/-was distributed between the Petitioner and her husband by order dated 08.01.2008. The husband of the Petitioner was given an amount of Rs. 1,46,829/-, of which Rs. 31,829/-were paid to the husband of the Petitioner by an account payee cheque andan amount of Rs. 60,000/-was ordered to be deposited in Fixed Deposit for a term of 5 years, where as an amount of Rs. 55,000/-was ordered to be deposited in Fixed Deposit for a term

of 3 years.

2.2. The husband of the Petitioner died on 16.10.2010. Therefore, the Petitioner approached Workmen Compensation Commissioner for getting the amount of the Fixed Deposit, which got matured on expiry of 3 years. On that application, the Workmen Compensation Commissioner has ordered that the Petitioner shall obtain a "Succession Certificate" from the competent Court and then shall produce the same before the Workmen Compensation Commissioner for receiving the amount of Fixed Deposit

3. Learned Advocate for the Petitioner invited attention of the Court to a decision of the Hon'ble the Apex Court in the matter of Rukhsana v. Nazrunnisa, reported in 2000 Law Suit (SC) 108, where in the Hon'ble the Apex Court was pleased to observe as under:

3. We can not approve the said view of the High Court, for, Succession Certificate as envisaged in the Indian Succession Act can be granted only in respect of "debts" or "securities" to which a deceased was entitled. The amount involved in this case was not a debt or security to which the deceased was entitled. This was a compensation sanctioned on account of the death of the deceased and is, therefore, not an asset belonging to the deceased but an amount which the legal representatives of the deceased can claim on their own account. The civil court will only decide as to who are the legal representatives and in what shares they are entitled to as per the Personal Law applicable to them. The Parties will move appropriate application before the court concerned for expediting the procedure regarding disbursement of the amount. With these observations we set aside the impugned order.

3.1 Learned Advocate for the Petitioner also invited attention of the Court to a decision of this Court in the matter of Aktharbibbi Abdul Razak Gulam Rasul and Others Vs. United India Insurance Co. Ltd., and submitted that No. such Succession Certificate was required to be asked for by the Workmen Compensation Commissioner.

3.2 Learned Advocate for the Petitioner invited attention of the Court to the averment/statement made before the Workmen Compensation Commissioner that the Petitioner and her husband were the only legal representative of the deceased son - Nileshgiri and on sad demise of her husband, the Petitioner was the only surviving heir and legal representative, entitled to receive the amount deposited in the joint name of her husband and the Workmen Compensation Commissioner.

4. Taking into consideration the law laid down by the Hon'ble the Apex Court, followed by this Court in the a fore said decision, the petition is required to be allowed. The same is accordingly allowed. Order dated 22.02.2011 passed by the Workmen Compensation Commissioner in Workmen Compensation (Fatal) Distribution Application No. 35 of 2007 is quashed and set aside. The Workmen Compensation Commissioner is directed to pay the amount of Fixed Deposit

which was for a sum of Rs. 55,000/- (Rupees Fifty Five Thousand Only) for a term of 3 years with accrued interest there on to the Petitioner at theearliest, but not later than 2 weeks from the date of production of certified copy of this judgment and order before the Workmen Compensation Commissioner. Rule is madeabsolute. No. costs.

Taking into consideration the hardships which the persons like the present Petitioners are subjected to, it is deemed proper that this judgment and order be circulated to all the Commissioners under the Workmen Compensation in the State of Gujarat.