

(1992) 07 P&H CK 0089
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 678 of 1988

Dhan Singh and Others

APPELLANT

Vs

PEPSU Road Transport Corpn.

RESPONDENT

Date of Decision : 24-07-1992

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)

Citation : (1993) 1 ACC 3 : (1994) 68 FLR 329 : (1993) 1 LLJ 972 : (1993) 103 PLR 396

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : Hemant Kumar, for the Appellant; Balginder Singh, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—This appeal is directed against the order of the Commissioner under the Workmen's Compensation Act, Bhalinda, dated June 4, 1988, whereby the application filed by the appellant-applicants has been dismissed by holding that they are not entitled to compensation on account of the death of their son Harnek Singh.

2. Harnek Singh, son of the appellants, who was working as a driver with the respondents, died on May 15, 1985 while on duty in the course of his employment. He was about 36 years of his age and drawing Rs. 924.45 paise as his salary on the date of his death. He was a bachelor. The appellants made an application for payment of compensation alleging themselves to be the dependents on the deceased. It was resisted by filing a written statement. It was alleged therein that at the time of death, deceased Harnek Singh was not on duty. Allegations regarding age, salary or the deceased being employed with the respondents, were not denied. On the pleadings of the parties, the following issues were framed:-

1. Whether Harnek Singh deceased has not died during the course of his employment? OPR
2. Whether the claim of the applicants is lime barred? OPR.
3. Whether the applicants are not entitled to claim any compensation? OPR.
4. Relief.

Learned Commissioner on appraisal of evidence produced by the parties came to the conclusion that death of Harnek Singh took place while he was on duty in the course of his employment and consequently returned a finding under Issue No. 1 in favour of the applicants. The claim application was held to be within time. Under Issue No. 3, it was however, found that 1 the mother of the deceased, i.e. applicant No. 2 was not entitled to compensation as her husband was alive being applicant No. 1. Compensation to applicant No. 1 was denied by observing that if he was solely dependent on the income of the] deceased son, he should have led independent evidence that his only source of income was the income of his deceased son and that he (applicant No. 1) had another son who was not contributing anything for his dependency. With these observations and findings, the application was dismissed.

Feeling aggrieved, the appellants i.e. the parents of deceased Harnek Singh, have filed the present appeal.

3. Learned counsel for the appellants has strenuously urged that the learned Commissioner has committed serious irregularities and illegalities in holding that the appellants are not entitled to compensation on account of the death of their son Harnek Singh who died while on duty in the course of his employment. Learned counsel further submitted that it was not necessary for the appellants to prove that they were wholly dependent on the deceased or the income of the deceased was the only source of their income, so as to entitle them to get compensation under the Workmen's Compensation Act, 1923 (for short the Act). Learned counsel further submitted that even if the appellants were partly dependent on the earnings of the deceased-workman at the time of his death, they were still entitled to compensation under the Act. In support of his submissions, learned counsel for the appellants referred to the provisions of Section 2(1)(d) of the Act, which are necessary to be noticed at this stage. Section 2(1)(d) reads as under: -

2. Definitions-(1) In this Act, unless there is anything repugnant in the subject or context-

(d) "dependant" means any of the following relatives of a deceased workman, namely,

(i) a widow, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death,

a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependant on the earnings of the workman at the time of his death -

(a) widower,

(b) a parent other than a widowed mother.

....."

A bare reading of Clause (i) of Sub-section (1) (d) of Section 2 reveals that a widow, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother are entitled to compensation under the Act on account of the death of a workman who dies while on duty in the course of employment irrespective of the fact, whether they are dependent on the workman or not. Sub-clause (a) to Clause (iii) to Sub-section (1d) ibid provides that a widower would be entitled to compensation if he was wholly or in part dependant on the earnings of the workman at the time of his death and Sub-clause (b) thereto, provides that a parent other than a widowed mother is entitled to compensation on account of death of his or her son if at the time of death of the workman, he or she was wholly or in part dependant on the earnings of a deceased son.

4. Applicant No. 1 Dhan Singh who appeared before the Commissioner as AW-1, stated that the applicants were dependant on their son Harnek Singh deceased and the latter was a bachelor. In cross-examination, he stated that he had another son who did not provide any assistance to them and that they were wholly dependent on Harnek Singh, deceased. Nothing has been brought on the record to show that the applicants had some other source of income or were otherwise dependent on somebody else. An obvious inference is that the applicants were dependent on their deceased son Harnek Singh who was bachelor at the time of his death. As already noticed, a parent is entitled to compensation on account of death of his/her son even if he or she was wholly or in part dependent upon him at the time of his death. Learned Commissioner has thus erred in concluding that the mother is not entitled to compensation under the provisions of the Act and that father is also not entitled to compensation as he did not lead independent evidence that deceased earnings was his only source of income. Even if the appellants had some other source of income, but they were partly dependant on the deceased, they, in my view, are entitled to payment of compensation under the Act. Learned counsel for the respondents has not been able to point out any evidence on record to show that the appellants were not even partly dependant on the earnings of their deceased son. May be they were not wholly dependent on the deceased, but it is extremely difficult to hold that they were not even partly dependant on the deceased especially having regard to the fact that the deceased was a bachelor. As per the definition of "dependant" as: contained in Section 2(1)(d) of the Act, reproduced above, it is clear that a parent, if wholly or in part dependant on the earnings of the workman, other than a widowed mother, is entitled to compensation. The

definition, in my: view, is wide enough to include even parents of the deceased. It can thus, certainly be inferred from the provisions of Section 2(1)(d) that the parents who are wholly or in part dependant on the income of their deceased son, would be entitled to compensation under the Act. For my aforesaid view, I find support from the observations made in Om Prakash and Anr. v. Surjeet 1989 ACJ 854 and Bakulabai Vithoba Palampalle Vs. Rajnabai Prabhodchandra Muchala and Others, .

5. In view of the conclusion arrived at above, the finding under Issue No.3, as returned by the learned Commissioner, cannot be sustained and are hereby set aside. It is held that the appellants are entitled to compensation under the Act being dependant on the earnings of their deceased son-workman.

6. Section 4 of the Act provides for an amount of compensation payable on account of the death of a workman being equal to forty per cent of the monthly wages of the deceased workman multiplied by the relevant factor. Section 4A provides for payment of interest and penalty in a case where the employer has defaulted in paying the compensation due under the Act within one month from the date it fell due. In the present case the facts are not in dispute. As noticed earlier, the deceased Harnek Singh was 36 years of age and drawing an amount of Rs. 924.45 paise at the time of his death. The relevant factor against the age of 36 has been provided as 194.64 in Schedule IV of the Act. The appellants are thus entitled to compensation amounting to Rs. 71,973.97 paise i.e. by multiplying the factor 194.64 with 369.78 paise being 40 per cent of the wages of the deceased. The appellants are further entitled to interest at the rate of 6 per cent per annum from the date the amount of compensation became due till the date of its payment. The amount of compensation as worked out above shall be payable to the appellants along with interest within one month from the date of judgment of this court and in the event of failure on the part of the respondents in making the payment within the above period, the appellants would be further entitled to an amount equivalent to 25 per cent of the amount of compensation as awarded above on account of penalty.

7. As a result of the above findings, the appellants would be entitled to compensation as indicated above. The appeal is consequently allowed in the above terms. No order as to costs.