

(1995) 07 OHC CK 0030
In the Orissa High Court
Case No : M.A. No. 3 of 1995

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
Sanatan Tarai and Others	RESPONDENT

Date of Decision : 06-07-1995

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)

Citation : (1996) ACJ 579 : (1997) 3 LLJ 459

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : M. Sinha, S. Sen and B. Singh, for the Appellant; R.N. Mohanty, B.N. Ratho, M.K. Panda and N.K. Sarangi, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—The only point urged in this appeal u/s 30 of the Workmen's Compensation Act, 1923 (in short, the "Act") relates to entitlement of Respondents 1 to 3 (hereinafter referred to as "claimants") to compensation.

2. Factual position is almost undisputed and in essence is as follows:

One Sanatan Tarai (hereinafter referred to as "deceased") lost his life in an automobile accident on June 5, 1993 wherein a vehicle bearing registration No. ORY 715 belonging to Md. Sahab Uddin (hereinafter referred to as "owner") was involved. Deceased at the time of accident was employed as helper and accident occurred in course of and out of his employment. The deceased was getting Rs. 900/- per month as his wages and was 20 years of age. The vehicle was subject matter of insurance with the appellant New India Assurance Co. Ltd. (hereinafter referred to as the "insurer"). Claim was lodged by the claimant in the premises that they were entitled to compensation as they depended on the deceased for their living. The Commissioner for Workmen's Compensation-cum-Asst. Labour Commissioner, Cuttack (in short, the "Commissioner") quantified the amount of compensation at Rs. 79,693/-. It is to be noted here that claimants 1 and 2 were

elder brothers of the deceased, while claimant No. 3 was his minor sister. It is the appellant insurer's case that in the absence of any finding that claimants 1 to 3 were dependents on the deceased, award is vitiated in law. Mr. R.N. Mohanty, learned counsel for claimants on the other hand with reference to definition of "dependent" as given in the Act submitted that plea taken by insurer is absolutely untenable.

3. For disposal of appeal a reference to definition of "dependent" as appearing in Section 2(1)(d) is necessary. The same reads as follows:

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

xx xx xx

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

(i) a widow, a minor legitimate son, and 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 dependent on the earnings of the workmen at the time of his death, -

(a) widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter illegitimate if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister of a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased and,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or (h) a paternal grandparent if no parent of workman is alive."

4. There is substance in the plea of the insurer that major elder brother of a workman are not encompassed by definition of "dependent" as given in the Act. However, Clause (d) of Sub-section (1) of Section 2 of the Act is crystal clear that minor brother or unmarried sister or a widowed sister comes within the umbrella of the expression "dependent". There being no dispute raised that claimant No. 3 Manjulata Tarai was a minor sister of the deceased, she for the purposes of the Act is a dependent and is entitled to compensation. Out of the awarded amount, a sum of Rs. 60,000/- be kept in fixed deposit in her name, in any Nationalised Bank for a period of five years, and balance be released to her through her

brother guardian Kartik Tarai on being identified by any of the learned counsel appearing for her before the Commissioner. No withdrawal shall be permitted against the amount to be kept in fixed deposit before expiry of the stipulated period. However, on being moved and being satisfied about any pressing need for funds, the Commissioner may permit withdrawal of such sum, as would meet the requirement.

The appeal is allowed to the extent indicated above.