
(2009) 03 SHI CK 0025
In the High Court Of Himachal Pradesh

Lal Mohan and Others

APPELLANT

Vs

State of Another

RESPONDENT

Date of Decision : 09-03-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4

Citation : (2011) ACJ 151 : (2009) 1 ShimLC 392

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—In the present appeal, the following substantial question of law arises:

1. Whether the legal heirs of the deceased lady, being the dependent sons minor and major and also the widower are entitled for the compensation under the Workmen"s Compensation Act?
2. Ms. Vandana Devi while working as daily wage Beldar in National Highway Sub Division, Nigulsari died in a motor accident. She was travelling in truck No. HPA-963 owned by the State. The accident took place on 21.10.1997 and she succumbed to the injuries sustained by her in the said accident on 8.6.1998. She left behind her husband (widower Choban Gop), sons Lakhan Gop (major) Lal Mohan and Shrawan Gop (minors). The said legal heirs filed an application claiming compensation u/s 30 of the Workmen"s Compensation Act, 1923 (hereinafter referred to as "the Act").
3. The respondent-State filed its reply admitting the factum of the accident, the employment of the deceased and her salary being paid at Rs. 45.75 paise per day. However, the factum of dependency and the status of the minor sons was disputed.

Based on the pleadings of the parties, the Commissioner Workmen"s Compensation framed the following issues:

1. Whether deceased Smt. Vandana Devi fell within the definition of workman?OPP
2. Whether the accident arose out of during the course of employment?OPP
3. Whether the respondent is liable to pay amount of compensation as demanded?OPP
4. Whether the workman died due to the injuries sustained by accident while on duty?OPP
4. Opportunity to lead evidence was afforded to the parties.

Appreciating the material on record, the Commissioner Workmen's Compensation answered the issues by holding that the deceased Vandana Devi was a workman. She died due to the injuries sustained in an accident while on duty and as such the accident arose out of and during the course of employment. On the question of compensation, however, the Commissioner held that since the applicants, namely, widower Choban Gop and major son Lakhan Gop were gainfully employed and there was no proof of dependency, hence they were not entitled to any compensation. With regard to minor sons, namely, Lal Mohan and Shrawan Gop, it was so held that in the absence of any proof with regard to the age and also it being the moral duty of the father, namely, Choban Gop to bring up his minor children, the minor children were not entitled to any compensation. The petition was consequently dismissed.

5. I have heard the learned Counsel for the parties and perused the record.

Section 2(d) of the Act reads as under:

- (d) "dependant" means any of the following relatives of a deceased workman,, namely:
- (i) a widow, a minor (legitimate or adopted) son, an unmarried (legitimate or adopted) 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 workman at the time of his death;
 - (a) a widower,
 - (b) a parent other than a widowed mother,
 - (c) a minor legitimate son, an unmarried illegitimate daughter or a daughter (legitimate or illegitimate or adopted) if married and a minor or if widowed and a minor,
 - (d) a minor brother or an unmarried sister or a widowed sister if a minor,

- (e) a widowed daughter-in-law,
- (f) a minor child of a pre-deceased son,
- (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or
- (h) a parental grandparent if no parent of the workman is alive.

Emphasis supplied

6. Bare perusal of the provision would show that even a widower is entitled to compensation if it is proved that he was wholly or partly dependent on the workman at the time of the death. Son who has attained the age of 18 years but is not infirm would not be entitled to any compensation.

7. However, Section 2 Sub-section (1) specifically entitles minor sons for compensation regardless of the fact that they are dependant, or not.

8. Thus, in my view qua the minor sons, dependency could not have been an issue and the Commissioner Workmen wrongly construed the relevant provisions of the Act. Obligation to bring up children is of both the parents and not that of the father alone. Particularly, where both the spouses are in gainful employment.

9. The question, however, needs to be considered, as to whether the said two minor sons were actually minor as on the date of the accident or not. This fact, in fact was never in dispute as the witness of the State, namely Shri Rajesh Kumar (RW-1) Junior Engineer, Nigulsari categorically deposed that both S/Shri Lal Mohan and Swaran Gop were minor as on the date of the accident. The claim petition specifically mentioned their age to be 14 and 12 years respectively which fact was also not denied in the reply by the State.

10. Thus, the undisputed position which emerges from the record is that both the appellants No. 1 and 2 being minors were entitled for compensation of which they have been illegally deprived.

11. From the record, it stands proved that the deceased was employed with the respondents as Beldar and drawing daily wages of Rs. 45.75 paise. This position is not disputed by Mr. ML. Chauhan, learned Counsel for the appellants also.

12. The compensation under the Act has to be awarded in terms of Section 4. Monthly wages of the deceased being Rs. 1372.50 paise and 50% of the same would be Rs. 686.25 paise, the age of the deceased being 37 years, proved by Shri Lal Mohan (PW-1), the factor of 192.14 is to be applied. Therefore, the minor sons would be entitled for compensation of Rs. $686.25 \times 192.14 = \text{Rs. } 1,31,856/-$. The death and the amount due being not in dispute, the claimants would be entitled to only interest @ 12% w.e.f. 30 days after the date of the death.

13. The amount shall be apportioned by both the claimants in equal share. The respondents are directed to deposit the amount in this Court within a period of

eight weeks from today.

The substantial question of law is answered accordingly.

For the aforesaid reasons, the appeal is disposed of.