**(2003) 04 MAD CK 0034**

**In the Madras High Court**

**Case No :** C.M.A. No. 321 of 1995

National Insurance Co. Ltd. and Another — APPELLANT

Vs

Srinivasa Goods Transport — RESPONDENT

**Date of Decision :** 17-04-2003

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 2(1)

**Citation :** (2003) 3 ACC 9 : (2003) ACJ 2066 : (2003) 3 CTC 15 : (2003) 3 LLJ 254

**Hon'ble Judges :** S. Sardar Zackria Hussain, J;P. Sathasivam, J

**Bench :** Division Bench

**Advocate :** R. Sivakumar, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

# Judgement

P. Sathasivam, J.—National Insurance Company Limited, Madras-1, aggrieved by the order of the Commissioner for Workmen''s

Compensation-No. 1, Madras-6 dated 16.11.1994, made in W.C.No. 87 of 1993, has preferred the above appeal.

2. The first respondent herein/applicant made a claim under the Workmen''s Compensation Act in respect of death of her brother by name Mani

alias Mahesh in a road accident on 29.8.90 in the course of his employment. According to her, her deceased brother Mani alias Mahesh was

working as a cleaner under Messrs. Srinivasa Goods Transport, Madras-79, 2nd respondent herein on a daily wage of Rs. 40 and batta of Rs.

10. On 29.8.90 while the deceased employee was travelling as a cleaner in lorry TSC 1611, he met with an accident at Garay village, Boed

District, Maharashtra State and died at the spot. As the death occurred out of and in the course of his employment, the owner of the vehicle, 2nd respondent herein and in the insurer, namely, appellant herein were liable to pay compensation under the Workmen''s Compensation Act. Before

the Commissioner, the owner of the goods transport did not file a counter affidavit and only the insurance company filed a counter opposing the

claim of the applicant. The Commissioner, on consideration of the materials placed, and after holding that the deceased employee died on 29.8.90

in an accident in the course of his employment, and the applicant being his dependent, and in the light of existence of valid policy, passed an order

directing the insurance company/appellant to pay Rs. 58,151.80 to the applicant within 30 days from the date of receipt of the said order.

Questioning the said order, the National Insurance Company has preferred the present appeal u/s 30 of the Workmen''s Compensation Act.

3. Heard Mr. R. Sivakumar, learned counsel for appellant. Though notice was served on the contesting first respondent, she has not chosen to

contest the appeal by engaging a counsel.

4. Mr. R. Sivakumar, learned counsel for the appellant, has raised his only contention that the applicant being a sister of the deceased, is not a

dependant in terms of definition given u/s 2(1)(d)(iii)(d) of the Workmen''s Compensation Act, 1923 (hereinafter referred to as ""the Act""),and

hence not entitled to compensation for the death of Mani alias Mahesh. Except this contention, he has not raised any other point.

5. First let us refer the definition of the word ""dependant"" as found in Section 2(1)(d) of the Act. Among various clauses, we are concerned with

Sub-clause (d) which reads as follows:

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

(a) xx xx

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

(i) xx xx

(ii) xx xx

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

(a) to (c) xx xx

 

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

There is no dispute that one Mani alias Mahesh while he was working as a cleaner in the second respondent Goods Transport, met with an

accident on 29.8.90 in the course of his employment, at Garay village, Boed District, Maharashtra State and died at the spot. It is the claim of the

applicant that she is the sister of the deceased Mani alias Mahesh. In the claim petition as well as in the affidavit sworn statement before the

Commissioner for Workmen''s Compensation, she asserted that she is the widow of one Murugaian and sister of the deceased. She also asserted

that she was dependant of the deceased Mani alias Mahesh. It is further seen that except herself, no one survived in her family and according to

her, her husband died 7 years prior to the date of her deposition before the Commissioner and on the date of the death of Mani alias Mahesh, she

was depending on him. We have already stated that the owner of the goods vehicle had not filed a counter statement disputing her claim. Even in

the counter statement filed by the Insurance Company, except a general denial, there is no specific denial in regard to ""widowed sister if a minor"",

by pointing out the provisions of Section 2(1)(d)(iii)(d) of the Act. In the absence of such a denial, it seems that the Commissioner had no occasion

to consider the claim in the context of the argument now advanced by the counsel for the appellant-Insurance company. It is true that as per

Section 2(1)(d)(iii)(d) of the Act, only minor brother or an unmarried sister or a widowed sister if a minor, if wholly or in part dependant on the

earnings of the workman at the time of his death alone is entitled to claim compensation. Here, we have referred to the assertion of the applicant

that she was married to one Murugaian, who died 7 years prior to the date of her deposition before the Commissioner. It is also her case that on

the date of death of her brother, she was depending on him and that she has no other source of income. No doubt, learned counsel for the

appellant by pointing out the term ""widowed sister if a minor"", would contend that widowed sister would not be a minor as per the existing statute;

and hence not a dependant and not entitled to claim compensation. We are unable to appreciate the said argument. It is true that as per Sub-clause

(iii) (d) of Clause (d) of Sub-section (1) of Section 2 of the Act, minor brother, unmarried sister, widowed sister if a minor alone are eligible to claim compensation, if they wholly or in part dependant on the earnings of the workman at the time of his death. Widowed sister cannot be a

minor, since the prevailing statute did not permit a female under 18, or a male under 21 to marry. In such a circumstance, widowed sister would

not be a minor at any point of time. Though learned counsel for the appellant has very much relied on a decision of this Court in the case of

Commissioner, Kovilpatti Municipality v. Tamilarasan, ACJ 876, wherein R. Balasubramanian, J., did not consider the claim ""widowed sister if a

minor"". In that case, petitioner Nos. 1 and 3 were shown to be minor brothers. Therefore, the learned Judge was right in holding that they straight

away went out of the definition of dependants. Likewise, petitioner Nos. 2 and 4 are sisters of the deceased. Here again, though there was no

pleading that they were unmarried, yet in the evidence, it was stated that they were unmarried. In such a circumstance, the learned Judge has held

that besides being unmarried sisters, they must also plead and prove that they were either wholly or in part dependant on the earnings of the

workman at the time of his death. The learned Judge rejected their claim on the ground that there is neither a pleading nor proof in regard thereto.

In the case on hand, we have already referred to the specific assertion of the applicant that she had lost her husband 7 years prior to her deposition

before the Commissioner, and that she was depending on her deceased brother. We have already explained that widowed sister cannot be a minor

at any point of time. In such a situation, the decision cited by the learned counsel for the appellant is not helpful to the case on hand. Accordingly,

we reject the only contention raised by the learned counsel for the appellant.

5. As stated earlier, there is no dispute regarding quantum of compensation arrived at by the Commissioner. Even otherwise, in the light of the

materials placed, with reference to the age, occupation and income of the applicant/claimant, the Commissioner by applying the formula provided

under the Act, arrived a compensation of Rs. 58,151.80, which in our opinion, is just and acceptable.

6. Under these circumstances, we do not find any merit in the appeal; consequently the same is dismissed. No costs.

 