

(2006) 11 KAR CK 0030

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6720 of 2002

National Insurance Co. Ltd.

APPELLANT

Vs

Sharanappa Nadagowda and Neelappa Dasappanavar

RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 2 (d)

Citation : (2007) ACJ 2466

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : A.M. Venkatesh, for the Appellant; Rajendra C. Desai, for R-1, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—This appeal by the Insurance Company is directed against the order passed by the Commissioner for Workmen's Compensation, Bijapur, ordering the appellant herein to pay compensation of Rs. 86,112/- to R-1 claimant. The main contention urged in the appeal as well as in the course of the argument by the learned Counsel for the appellant is that the claimant was not "dependent" within the meaning of Section 2(d) of the Workmen's Compensation Act, 1923 (the Act" for short) and, as such, the Commissioner was in error in putting the liability on the appellant to pay compensation to R-1 claimant.

2. Elaborating the contentions urged as above, it was submitted that there is no dispute with regard to the date of accident or with regard to the fact of the younger brother of the (sic) succumbing to the injuries caused in the accident, but the only question is whether the claimant can be said to be the dependent of the deceased so as to be eligible for compensation under the Act, Referring to Section 2(d) of the Act, it was submitted that the claimant, being the elder brother of the deceased driver, does not come within any of the categories mentioned in Section 2(d) definition. Apart from this, absolutely no evidence is

placed by the claimant to indicate as to how he became dependent on his deceased younger brother. Nothing is stated by the claimant with regard to the income, occupation, etc. But, merely on the basis of he being the elder brother of the deceased, compensation was claimed. Therefore, the order of the Commissioner is liable to be set aside on this ground alone.

3. On the other hand, the learned Counsel for the respondent-claimant submitted that there is no bar for the claimant to approach the forum under the Motor Vehicles Act or under the W.C. Act and under the Motor Vehicles Act, a brother is entitled to file a claim petition seeking compensation for the death of his younger or elder brother. In this regard, he placed reliance on a ruling of the Apex Court reported in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another,

4. Having heard both sides and after carefully perusing the impugned order as well as the record of this case, the only question is whether the respondent-claimant can be considered as a dependent so as to become eligible for compensation under the Act.

5. It is not in dispute that the claimant is the elder brother of the deceased driver and, as far as his age is concerned, the age of the claimant is 45 years, whereas his deceased younger brother was aged 26 years. Section 2(d) of the Act. defines a dependent as follows:

2. Definitions.-(1)...

(d) "dependent" 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;

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate 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 paternal grandparent if no parent of the workman is alive;

[Explanation.- For the purpose of Sub-clause (ii) and items (f) and (g) of Sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively];

6. It is, therefore, clear from the above definition that the claimant herein, being the elder brother of the deceased, does not fit in any one of the categories of the dependents mentioned in the definition of Section 2(d). Apart from this, a major brother of a deceased workman cannot be considered as a "dependent". This has been the view taken by the Rajasthan High Court in a case reported in 1994 Lab.I.C. 1968.

7. In the light of the aforesaid position in law, in the instant case, the Commissioner could not have treated the claimant as the dependent of his deceased younger brother. Therefore, putting liability on the appellant-Insurance Company cannot be sustained in law.

8. Hence, the appeal is allowed and the impugned order is set aside insofar as putting the liability on the appellant-Insurance Company to pay compensation to the claimant is concerned. The amount in deposit shall be returned to the appellant.