

(1995) 07 OHC CK 0033
In the Orissa High Court
Case No : M.A. No. 417 of 1992

National Insurance Company Ltd.

APPELLANT

Vs

Ranjulata Bhuyan and Another

RESPONDENT

Date of Decision : 10-07-1995

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 8
Workmens Compensation Rules, 1924 — Rule 8(1)

Citation : (1996) ACJ 716 : (1997) 3 LLJ 428

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : A.K. Choudhury, T.K. Deo and L. Samantray, for the Appellant; T.C. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The Judgment of the Commissioner under the Workmen's Compensation Act, Cuttack, dated April 24, 1992 in W.C. Case No. -16-D of 1989 is assailed by the National Insurance Company Limited in this appeal filed u/s 30(1) of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"). The point that arises for determination in this case is whether Respondent No. 1, Ranjulata Bhuyan, wife of late Sudarsan Bhuyan is entitled to receive any compensation in the case. Answer to this question depends on determination of the point, whether, in the facts and circumstances of the case, Sudarsan Bhuyan was entitled to receive compensation under the Act for the death of his brother, deceased workman, Trilochan Bhuyan.

2. The aforementioned W.C. Case was initiated on the application filed by late Sudarsan Bhuyan claiming compensation as a dependent of his brother late Trilochan Bhuyan. Trilochan Bhuyan who was engaged as helper of truck No. ORU 4741, died on January 21, 1989 in an accident arising out of and in course of employment. Sudarsan claimed compensation of Rs. 90,000/- from Respondent No. 2, Anirudha Rout, owner of the truck, and the appellant the insurer of the

vehicle. The case pleaded by him was that his brother was twenty years old at the time of his death; that he (Sudarsan) was totally dependent on his brother for his sustenance and was, therefore, entitled to receive compensation under the Act.

3. Respondent No. 2 in his written statement admitted the claim of the application but pleaded that since the vehicle was insured with the appellant-company, the liability for the compensation amount is to be borne by it. He stated that the deceased was being paid Rs. 800/- per month as salary.

4. The appellant-Insurance Company denied the averments made in the claim petition and required the applicant to prove the allegations.

5. The Commissioner by his judgment dated June 5, 1989 allowed the claim holding, inter alia, that the applicant's brother was helper of the truck ORU 4841 at the time of the accident and as such he came within the purview of "workman" as defined under the Act; that the death of the workman was due to the injuries sustained in the accident which took place in course of his employment. The Insurance Company assailed the said decision of the Commissioner in this Court in Miscellaneous Appeal No. 322 of 1989. This Court, by the judgment rendered on February 20, 1991, which has since been reported in National Insurance Company Vs. Sudarsan Bhuyan and Another, , allowed the appeal and remitted the case to the Commissioner for fresh disposal. This Court made it clear that the findings of fact that the deceased workman was receiving salary of Rs. 800/- per month and that the accident took place in course of and arose out of his employment had been confirmed and need not be reconsidered by the Commissioner. This Court directed that the Commissioner after giving opportunity to the parties to adduce further evidence would record a clear finding about dependence of the claimant and his entitlement to compensation on that basis. Parties were given liberty to adduce better evidence about the age of the deceased workman. In pursuance of the direction of this Court, the case was reconsidered by the Commissioner. During pendency of the case, the applicant Sudarsan Bhuyan having died on April 4, 1991, his wife Ranjulata Bhuyan (Respondent No. 1) filed an application for being impleaded as a party in place of her deceased husband. On hearing the parties, the Commissioner allowed the application and substituted/impleaded Ranjulata Bhuyan in place of her deceased husband.

6. The Commissioner formulated three issues for consideration:-

"1) Whether the claimant late Sudarsan Bhuyan was the dependent on the earning of deceased Trilochan Bhuyan?

2) What was the age of the deceased Trilochan Bhuyan on the date of accident?

3) Whether Ranjula Bhuyan is the legal heir of late Sudarsan Bhuyan and is entitled for compensation as would have been entitled by late Sudarsan Bhuyan?"

7. On consideration of the evidence on record, the Commissioner held that late

Sudarsan Bhuyan being the minor brother of the deceased having no source of income was fully dependent on the earning of his elder brother Trilochan Bhuyan; that the deceased workman was aged 20 years at the time of his death; and that Ranjulata Bhuyan, wife of late Sudarsan Bhuyan, is entitled to get compensation which was payable under the Act to Sudarsan Bhuyan. The compensation amount was quantified at Rs. 71,680/-. The said Judgment is under challenge in the present appeal.

8. On the facts and circumstances of the case and the findings recorded by the Commissioner, the questions formulated earlier arise for consideration,

9. Before discussing the points, it will be convenient to notice some relevant statutory provisions. Section 2(1)(d) defines "dependent", to include " a minor brother or an unmarried sister or a widowed sister of a minor", if wholly or in part dependent on the earnings of the workman at the time of his death. The proviso to Section 8(1) lays down that in the case of deceased workman, an employer may make to any dependent advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependent shall be deducted by the Commissioner from such compensation and repaid to the employer. In Sub-Section (4) of Section 8, it is laid down, inter alia, that if the Commissioner is satisfied after any inquiry which he may deem necessary that no dependent exists, he shall repay the balance of the money of the employer by whom it was paid. Sub-section (1) of Section 22 mandates that no application for the settlement of any matter by a Commissioner other than an application by a dependent or dependents for compensation shall be made unless and until some questions have arisen between the parties in connection therewith which they have been unable to settle by agreement. Under Rule 8(1) of the Workmen's Compensation Rules, 1924, a dependent of a deceased workman may apply to the Commissioner for the issue of an order to deposit compensation in respect of the death of the workman and such application shall be made in the Form-C.

10. From the above statutory provisions, it is clear that a dependent or all dependents coming within the meaning of the term as defined in Section 2(1)(d) are entitled to receive compensation for death of the deceased workmen. As noted earlier, the specific finding of fact recorded by the Commissioner is that on the date of the accident, the applicant Sudarsan Bhuyan, minor brother of the deceased workman Trilochan Bhuyan, was totally dependent on the earnings of the latter. Such a person comes within the meaning of "dependent" as defined in Section 2(1)(d)(iii) of the Act.

11. The question that remains to be considered is whether Respondent No. 1, Ranjulata Bhuyan, wife of late Sudarsan Bhuyan, is entitled to receive the compensation amount which would have been paid to her husband. Undisputedly, Sudarsan died during pendency of the case before the Commissioner and before any amount of compensation was deposited in the Court of the Commissioner by the employer or the insurer of the vehicle. It is not

in dispute that Ranjulata is the sole legal heir of the applicant Sudarsan. The question is whether in such circumstances she is entitled to lay claim to the compensation which could be awarded in the case instituted by her deceased husband. This question was considered by a Division Bench of the Kerala High Court in the case of Commissioner for workmen's Compensation v. Mohanan 1988 A.C.J. 902 in which it was held, inter alia, that when the compensation amount deposited with the Commissioner for Workmen's Compensation becomes the property of the sole dependent of the deceased workman, and if that sole dependent dies prior to the allotment of that compensation the said amount would devolve on the heirs of the dependent and not on the heirs of the deceased workman, whether there is opposition or not. The Court further held that the jurisdiction of the Commissioner is only to decide about the dependent who is entitled to the compensation on the date of death of the workman. When once that decision is made, he has discharged his duty under the Act and payment has to be ordered by him. The Court observed that when the Act and Rules have not conferred on the Commissioner any right to settle the dispute, if any, between, the heirs of the dependent of a workman, it is difficult to clothe him with such power on a complicated issue of a civil nature as incidental to his right to direct payment to the dependent. The Court placed reliance on the decisions reported in AIR 1939 Mad 402 (I. Abdurabiman v. W.N. Beeran Koya) 1980 M.P.L.J. 261 (Reference u/s 27, Workmen's Compensation Act), AIR 1968 Bombay 328, (Nargarida Gomes v. M. Mackenzie & Co.), Manubhai and Company Vs. Babajee Rajaram, , 1985 A.C.J. 728 (Kerala) (P.R. Rani v. Deputy Labour Commissioner), Pasupati Dutt Vs. Kelvin Jute Mills, , 1958 I LLJ 746 (A.P.) (Radhakrishna Rice Mill v. G. Appalacharyulu) and Kaveri Structurals Vs. Bhagyam, and dissented from the Full Bench decision of the Madras High Court reported in B.M. Habeebullah Maricar Vs. Periaswami and Others, . The conspectus of the views taken in the decisions of the different High Courts noted above is that once an allotment of compensation to a dependent or a distribution of compensation money amongst several dependents is made, the compensation so allotted or distributed becomes the property of the dependent if the dependent dies, the said sum, being his property, will devolve on his or her or heirs. The Full Bench of the Madras High Court in B.M. Habeebullah (supra), interpreting the provisions of Sections 8(4) and 23 of the Act and Rule 41 of the Rules held that Section 2(1)(n) enlarges the definition of "workmen" so as to bring within its compass the dependents of the workman; that the word "workman" as occurring in Section 9 would thus mean the workman himself if he is alive and his dependents if he is not; that Section 9 rules out the passing of compensation by succession to heirs of a deceased workman who are not his dependents. The Court further held the provisions of Section 8(4) leave no room for doubt that the Act was not intended to benefit any person except the workman and his dependents; and that the definition of the term "dependent" would show that it is not intended to benefit all the heirs of a deceased workman, but to embrace only those relations who, to some extent, depend upon him for their daily necessities. The Court observed that kinship coupled

with dependency is thus made the sole criterion for a person to fall within the ambit of the definition. These observations of the Full Bench of the Madras High Court, as I read them, make the position clear that in case of death of a workman, compensation under the Act is payable to his dependents coming within the meaning of that term in the Act. It is also clear that the heirs of the deceased workman (other than dependents) are not entitled to receive compensation under the Act. The further question, namely, whether in case of death of the dependent-applicant, the compensation amount would be paid to his legal heirs or would revert to the employer, was not specifically considered by the Full Bench. That question has, however, been considered by the Division Bench of the Kerala High Court which has held that the legal heirs of the deceased dependent will receive the compensation money to the exclusion of the heirs of the deceased workman. I am in respectful agreement with the analysis made and the view expressed by the Kerala High Court in the case of Commissioner for Workmen's Compensation v. Mohanan (supra), which appears to be fair, equitable, reasonable and in accord with the spirit of the beneficial statute, the Act.

12. Coming to the case at hand, on the findings of fact recorded by the Commissioner that Sudarsan, the minor brother of the deceased workman Trilochan, was solely dependent on his (Trilochan's) earning at the time of the latter's death and that Ranjulata (Respondent No. 1) is the sole heir of Sudarsan, there is little scope for doubt that she is entitled to receive the compensation which would have been paid to her husband under the Act. Therefore, the Commissioner cannot be said to have committed any serious illegality in awarding the compensation amount due to Sudarsan in favour of Ranjulata.

13. In the result, the appeal is devoid of any merit and is accordingly dismissed with costs. Hearing fee is assessed at Rs. 1,000/-.