
(2017) 05 SHI CK 0051
In the High Court Of Himachal Pradesh
Case No : 493 of 2016

National Insurance Company Ltd

APPELLANT

Vs

Smt. Sarla and another

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

[Employees Compensation Act, 1923](#), [Section 3](#), [Section 2\(d\)](#), [Section 4A\(3\)](#), [Section 2\(1\)\(d\)](#), [Section 2\(1\)\(d\)\(i\)](#), [Section 2\(1\)\(d\)\(iii\)\(b\)](#), [Section 2\(1\)\(d\)](#)

Citation : (2017) 05 SHI CK 0051

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : Lalit Kumar Sharma, H.C.Sharma.

Final Decision : Disposed

Judgement

1. The Insurer/appellant herein stands aggrieved by the pronouncement recorded by the learned Civil Judge (Jr. Division), Shimla, while exercising powers of "Commissioner" under the Employees' Compensation Act, 1923, wherefrom, it, for hence begetting its reversal, has instituted the instant appeal herebefore.

2. This Court had on 04.10.2016 admitted the instant appeal, on the hereinafter extracted substantial questions of law:-

1"Whether the claim petition was maintainable within the four corner of Employees Compensation Act in the facts and circumstances where the claimant Sarla Devi was/is not dependant as per Section 2(d) of the Act ibid as in the evidence she has admitted that she is owner of apple orchard also generate her income from agriculture pursuit and her husband is alive?

2. Whether the Commissioner was competent to award the interest from 10.02.2012 although the accident in question as occurred on 02.09.2012 as the

interest if at all payable becomes due 30 days after the accident.

3. The learned counsel for the insurer submits that the mother of the deceased, the latter whereof, is not contested by him ""to"" suffer his demise during the course of his performing employment, in the relevant ill-fated vehicle, under one Joginder Singh, also he does not contest the fact of his drawing from his relevant employment, wages per mensem comprised in a sum of Rs.8,000/-. However, the learned counsel for the insurer submits that the claimant does not fall within the ambit of the definition of "dependent" as encapsulated in the provisions of Section 2(1)(d) of the Employees' Compensation Act, 1923 (hereinafter referred to as the "Act"), provisions whereof stand extracted hereinafter, hence he submits that the claim petition warranted dismissal.

"2(1)(d) dependant" 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 workman at the time of his death, (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 if married and a minor or if widowed and a minor, (d) a minor brother or a 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;]

For carrying forward the aforesaid submission, he makes a reference to clause (i) of Section 2(d) of the "Act" wherein the right to rear a claim for compensation is foisted only in a widow, a minor son and an unmarried daughter or a widowed mother. He hence proceeds to submit that with the aforesaid relevant clause of sub section (i) of Section 2(d) of the "Act", while specifically including the aforesaid "category" of relatives of the deceased "within" the ambit of theirs being "his dependents" whereas with the claimant not falling in any of the relevant categories as spelt therein, wherefrom he contends with the category of the claimant who is the mother of the deceased, who however has her husband surviving hence standing explicitly excluded from its ambit, begets an inference that the claim petition preferred by her entailing the effect of its dismissal. However, in his making the aforesaid submission, he has remained unmindful to the provisions, in succession thereof, occurring in sub section 2(1)(d)(iii) of the Act, provisions whereof stand extracted hereinabove. A perusal of clause (iii)(b) of the Act palpably displays that a "parent" other than the widowed mother also holding the apposite statutory leverage to prefer a petition for compensation, on occurrence of demise of her employee son, on whose income she at the time of

his demise is evidently wholly or in part hence evidently dependent. The underlying import of the phraseology occurring therein "a parent other than a widowed mother" "is" that it carves an exception to the principle constituted in Section 2(1)(d)(i), which however, includes within the definition of "dependant" a widow, a minor son, an unmarried daughter or a widowed mother, whereas the mother of the deceased, when her husband is surviving hence therein stands explicitly excluded from the definition of a "dependent". Consequently, with Section 2(1)(d)(iii)(b) of the Act, which apparently occurs subsequent to sub clause 2(1)(d)(i), in sequel, with its operating as an exception to the provisions which occur prior thereto also its visibly fastening a facilitation in a parent other than a widowed mother, to prefer a claim petition on demise of deceased employee son. In aftermath, with the parlance borne by the aforesaid phraseology occurring in Section 2(1)(d)(iii)(b) of the Act being none other than "of" even if the claimant within the ambit of Section 2(1)(d)(i) of the Act is excluded to be a dependent of her deceased employee son, she is yet not statutorily ousted from being construed to be a dependent of her deceased employee son nor also she is debarred to, on occurrence of his demise, during the course of his performing employment, to institute or to rear a claim for compensation. In other words even if she is not the widowed mother of the deceased employee, she is hence construable to a "dependent" of her deceased employee son also she holds a right to rear a claim for compensation, in event of his demise evidently occurring during the course of his performing employment. However, the learned counsel for the insurer also proceeds to submit before this Court, that even if assumingly the claimant holds a right to rear a claim for compensation against her employer, on account of demise of her son evidently occurring during the course of his performing duties under his employer, nonetheless it is also imperative for the claimant, to also prove the fact "of hers" at the relevant time of occurrence of his demise being wholly or in part dependent upon his earnings. He submits that the ingredients cast in Section 2(1)(d)(iii) of the Act, comprised in the phraseology "wholly or in part" when stand unsatiated, he hence contends that no benefit thereof being ensuable vis-?-vis the claimant, inference whereof qua unsatiation of the imperative ingredients held in Section 2(1)(d)(iii) of the Act, is contended by him, to stand aroused, from the fact of a communication occurring in the cross-examination of PW-1 qua her husband holding ownership over an apple orchard wherefrom he rears an income of Rs.2 to 3 lacs. He hence proceeds to argue that the claimant at the relevant time was hence neither wholly or partly dependent upon the earning of her deceased employee son. However, the aforesaid submission warrants its standing rejected, as a further reading, in its entirety of the cross-examination, of the claimant, unveils that she besides the deceased has another son also its reading unveils that the family of the siblings of her deceased employee son, residing jointly with her husband. Since no evidence occurs on record revealing that the deceased employee son, of the claimant, was married hence when he obviously was not rearing a family upon whom he could spend his income, in sequel it is concluded that he handed over his earnings to his mother. Moreover,

despite the husband of the claimant rearing an income of Rs. 2 to 3 lacs from his apple orchard, would not oust the claim for compensation reared by the claimant against the owner of the ill-fated truck, in truck whereof the deceased at the relevant time was engaged as a driver. Significantly when the income aforesaid, is to be concluded to be spent on the family members of the siblings of the deceased employee besides on other members of the deceaseds' family hence when no residual substantial or sufficient income for maintaining the mother of the deceased, may hence be left. In aftermath the claimant, the mother of the deceased employee son, hence standing deprived from hers receiving the income reared by her deceased employee son from his relevant employment also when the entire income reared by her husband from his orchard is not spent entirely on her, rather may be spent upon all members of the joint family hence even if the claimant was partly dependent upon the earnings of her deceased employee son, it is to be concluded that the ingredient(s) of Section 2(d)(iii) of the Act, holding a contemplation that even if the surviving unwidowed mother of the deceased employee son, "is partly" at the relevant time "dependent upon the earnings of her deceased employee son", she would hence on his demise stand deprived of the same also she would fall within the statutory signification of "dependent" of her deceased employee son. In sequel, with the claimant evidently being at the relevant time partly dependent upon the earning of her deceased employee son, she on his demise is entitled to stake a claim for compensation. Fortifying impetus to the aforesaid inference is gathered by the fact of PW-1, the husband of the claimant while his standing crossexamined, his not being put any suggestion, displaying the fact that the income reared from his orchard being in its entirety spent for the well being and upkeep of the claimant. Absence of the aforesaid suggestion(s) to RW- 1, constrains this Court to conclude that hence only a part of the income reared by him from his orchard being spent upon the upkeep of the claimant. Moreover, no apposite suggestion has been put by the learned counsel for the insurer while holding RW-1, to cross-examination with an echoing therein that the earnings reared by the deceased from the relevant employment were never during his life time handed over by him to the claimant. Consequently, absence of the aforesaid suggestion also coaxes an inference that the claimant was at the relevant time, receiving from her deceased employee son, the earnings derived by him from his relevant employment, hence she on demise of her son, has been deprived of the aforesaid income also when the entire income, as reared by her husband, is evidently not spent upon her, she is to be concluded to be sufficiently dependent or in part dependent upon the earnings of her deceased employee son. Accordingly the substantial question No.1 is answered against the insurer. Corollary of the aforesaid, is that she hence has satisfied the ingredients held in Section 2(1)(d) (iii) of the Act and is entitled to maintain the claim petition.

4. The mandate of Section 4A(3) of the Act, whereby on occurrence of default, in the apposite defraying within one month, from the date it fell due "of compensation", upon the aggrieved, by the owner, provisions whereof stands

extracted hereinafter:-

"Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall in addition to the amount of the arrears, pay simple interest thereon at the rate of 12% per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and"

hence entail the consequence of his being statutorily encumbered with the liability to pay interest on the compensation amount at the rate(s) stipulated in clause (a) and (b) of Section 4A(3) of the Act. However, since it is not contested that the employer, did not, immediately on occurrence of the ill-fated mishap involving the offending vehicle, make deposit of the compensation amount. Consequently, the mandate of clause (a) and (b) of Section 3 of the Act stood attracted.

5. The learned counsel for the insurance, has made a vigorous submission that since the Insurance Company has not denied the fact that the relevant insurance cover issued with respect to the offending vehicle not holding a clause therein whereby the liability of interest carried on the compensation amount was not fastenable upon the insurer. Consequently, with the relevant insurance cover issued with respect to the offending vehicle "not" excluding the liability of the insurer to defray/indemnify the owner, the interest borne on the compensation amount. In sequel, any liability, in respect thereof is to be fastened upon the insurer, as aptly done by the learned Commissioner. However, the error which is apparently committed by the learned Commissioner, is comprised in the factum of his infracting the mandate of clause (a) and (b) of sub- section (3) of Section 4A of the Act, comprised in his holding that interest on compensation amount being leviable on occurrence of the ill-fated mishap whereas it was leviable thereon on one month elapsing from the date when the accident occurred. Consequently, the error is rectified by ordering that the interest shall be levied upon the amount of compensation on one month elapsing since occurrence of the ill-fated accident. The substantial questions of law are answered accordingly. The impugned judgement is modified accordingly. All pending applications also stand disposed of.