

(1952) 04 MAD CK 0014
In the Madras High Court
Case No : A.A.O. No. 321 of 1950

Proprietor, St. Joseph's Automobile and Mechanical Works,
Tuticorin

APPELLANT

Vs

Maria Soosai Pillai

RESPONDENT

Date of Decision : 23-04-1952

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 2(1), 30

Citation : AIR 1953 Mad 206 : (1952) 65 LW 897 : (1952) 2 MLJ 436

Hon'ble Judges : Chandra Reddi, J

Bench : Single Bench

Advocate : K.S. Rajagopalachari, for the Appellant; G. Chandrasekhara Sastri, (Amicus Curiae), for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddi, J.—This appeal arises out of an application filed by the respondent herein for compensation under the Workmen's

Compensation Act. The respondent's son who was of tender years was employed as a workman in the appellant's workshop as a cleaner on a

daily wage of Rs. 0-4-0. The workman met with an accident on 8-5-1949 while working in the factory during night time which resulted in his

death. The respondent claimed a lump sum payment of Rs. 800 u/s 3 of the Act.

2. This application was opposed by the employer on the ground that respondent's son was not a workman within the meaning of the Act as he

was only an apprentice, that the accident did not arise during the course of his employment and lastly that the application was incompetent as the

applicant was not a dependent within the meaning of Section 2(1)(d) of the Act. The Commissioner for workmen's compensation overruled these

objections and granted a sum of Rs. 500 by way of compensation to the applicant. He found that the deceased was a workman within the meaning of Section 2(1)(n) and that the accident occurred in the course of his employment under the applicant. As regards the competency of the applicant to maintain the application, the opinion of the Commissioner was that the applicant was partly dependent on the deceased and as such was entitled to claim compensation.

3. The employer has filed this appeal against that order.

4. In this appeal, the findings of the Commissioner on the first two issues were not seriously challenged as they were essentially questions of fact.

u/s 30 of the Act. this court's jurisdiction to interfere with an order of the Commissioner for Workmen's Compensation in appeal is confined to

substantial questions of law. That being so, it is not open to the appellant to question the correctness of the conclusion of the Commissioner on

those two questions.

5. The only point that was debated was that the respondent was not a dependent within the meaning of Section 2(1)(d) of the Act. Under that

section a dependent ""includes a parent other than a widowed mother if wholly or in part dependent on the earnings of the workman at the time of

his death"". In order to come within the ambit of the definition of ""a dependent"" a father has to prove that he was dependent upon the earnings of his

deceased son either wholly or in part.

6. The appellant contends that in this case the parent is not a dependent because on his own admission he was not in any way depending on the

earnings of his son. The statement of the applicant in the evidence that has given rise to this conclusion is this:

At the time of his death he was eking Re. 0-4-0 per day. The expenses for the food of the deceased would be about Rs. 20 to Rs. 25 per month.

He was paid Rs. 6 Per month. For other expenses, I used to pay him for dress etc.

7. the counsel for the appellant urges that on this admission the father cannot be said to be a dependent within the meaning of Section 2(1)(d) of

the Act. In order to claim the benefit u/s 2, the parent must show, the learned counsel argues, that out of the earnings of the son there was a

balance which was useful to him. In support of this contention, he cited a

decision of a Bench of this court in -- Yekkala Venkataramayya Vs.

Achugatla Baba Sahib, . There their Lordships had to consider whether a father without even alleging that he was dependent on the earnings of his

deceased workman could maintain an application for compensation.

The learned Judges expressed the opinion that u/s 2(1)(d) as amended by Act XI of 1933 a parent had no locus standi to claim compensation

under the Act without proof of his dependence on the earnings of his workman either wholly or in part. It may be pointed out that prior to 1933,

Sub-clause (d) stood as follows:

"Dependent" means any of the following relatives of a deceased workman, namely, a wife, husband, parent, minor son, unmarried daughter,

married daughter who is a minor etc.

But the amendment took away the parent other than the widowed mother from that category and under the amended definition a father could be

regarded as a dependent only when he could establish that he was really depending on the earnings of the workman either wholly or partly. This

case did not decide the point that arises for consideration in this case.

8. The question that I have to decide is whether a mere contribution by the workman towards the expenses of the family is sufficient to enable the

father to claim as a dependent within the meaning of the Act irrespective of the fact whether the parent derived any advantage out of the earnings of

the deceased workman. This point has come up for discussion in other courts, though there is no case of our court bearing on this point.

9. In -- Damjee v. Maung Hla Sein", AIR 1939 Rang. 369 the question was whether a husband was a dependent on the earnings of his wife within

the meaning of Section 2(1)(d) of the Act. All that was alleged in the application for compensation was that he and his wife used to pool their

earnings which went into a common pot. The learned Judges took the view that that was not sufficient to constitute the husband a dependent who

could claim compensation under the Act. The test, according to the learned Judges was whether as a result of the death of the workman any loss

had occurred to the applicant and whether without the earnings of the deceased workman he could live as well as he lived before. The learned

Judges remarked that the purpose of the statute was not to give solatium to a relative of the deceased workman but to replace the loss sustained

as a result of the fatal accident to the workman.

9a. There is a very elucidating exposition of the law on the subject in the speech of Serutton LJ in -- "Pear v. Blockow Vaughan and Co.", 94

L.J.K.B. 497;

It seems to me that one person is not dependent upon another unless he is receiving a net advantage from that person, that is to say a balance after paying the expenses of the maintenance if he bears them.

Again, it is observed in the speech of the same Law-Lord on page 510:

I wish, however, to guard myself on one question, that is, if at the time of the death there is no dependency, because at the time of the death there

is no balance coming, or which has come in the past, from the deceased to the alleged dependant. I personally am not at present satisfied that in

such a case it can be said "Oh, but he is dependent, because there would have been a contribution, or might have been a contribution in the

future".

In the same case Warrington L. J. remarked that if the son made no contribution for the provision of the ordinary necessities, the father could not

be treated as a partial dependent OR the son. In that case, a son who was a boy of 11 years and employed in a coal mine was earning 11 Sh. 10

d. a week which was contributed to the family fund. There being no evidence as to what was the amount of burden thrown upon the father and as

to the net balance in respect of which there is dependency on the part of the father, it was held that the father was not a co-dependent on the

deceased workman wholly or in part.

10. In -- "Tamworth Colliery Co. Ltd. v. Hall", 1911 A. C. 665, the principle was stated to be that if the father did not gain anything from the

earnings of his son, he was not a dependent who could claim compensation under the Workmen's Compensation Act. Lord Loreburn L. C.

observed that ""the proper course is to look at all the circumstances and to say to what extent, if at all, was the father dependent upon his son's

earnings."" Support may be found for this view in -- "Nugent v. Londonderry Collieries Ltd.", 1930 1 K. B. 159.

11. Mr. Chandrasekhara Sastri who assisted the court as Amicus Curiae has cited a decision of the House of Lords in the -- "Main Colliery Co.

Ltd. v. Davies", 1990 A. C. 358. It was decided there that as the wages of the workman contributed to the family fund with which the father could

keep his family the father must be said to be dependent partially on the earnings of his deceased son who was a workman and comes within the

definition of "dependent". According to that decision, the test in deciding whether a parent was dependent wholly or partially upon the deceased,

workman was:

What the family was in fact earning, what the family was in fact spending, for the purpose of its maintenance as a family seems to me to be the only

thing which the country court Judge could properly regard.

This decision lays down that in deciding whether a person was dependent on the deceased workman within the meaning of the definition

dependent" it has to be ascertained whether there was any kind of dependency at all giving a right to claim compensation. The principle deducible

from the various decisions is that when the earnings of the deceased workman were hardly sufficient for his maintenance and no balance left which

would contribute to the family fund the parent cannot be said to be a dependent within the meaning of Section 2, Clause 1(d). But if the deceased

workman was rendering either valuable services to the family, that might be taken into consideration in determining the degree of dependency. It

may also be stated that the dependency is with reference to the date of the death of the workman and the fact that at a future date the father might

have to depend upon the son is not a relevant consideration.

12. In this context, I may also refer to a passage in Halsbury's Laws of England (2nd Edition. volume 34). at page 894:

Where several members of a family contribute to a family fund, a diminution of this fund by withdrawal of the contribution of one of its members

owing to death by accident, will only give a right to the head of the family to compensation if the contribution so withdrawn was expended wholly

or in part upon the necessities of life for the family.

As I have already pointed out the admission of the applicant makes it abundantly clear that the earnings of the deceased workman far from being

an asset to the family were not sufficient to maintain him and the applicant had to spend considerable portion of his earnings on the maintenance of

his deceased son. In these circumstances, the only conclusion that could be

reached is that the father not being a dependent wholly or partially on the earnings of the deceased workman was not a dependent within the meaning of the definition in Section 2(1)(d) and therefore has no "locus standi" to maintain this application. It follows that the order of the Commissioner for the Workmen's Compensation is erroneous and ought to be set aside.

13. In the result, the appeal is allowed. The appellant is willing to make "ex gratia" a payment of Rs. 100 to the respondent in addition to the amount already given by him to the applicant for the funerals of his son. He will therefore be entitled to get back the amount deposited less the sum of Rs. 100 which will be paid out to the respondent.

14. Before leaving this I must thank Mr. Chandrasekhara Sastri who assisted me as "amicus curiae" in this case.