

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 11 of 2011**

Kheman Lal Thakur S/o late Shri Pahru Ram Thakur, aged 40 years,
Caste Gond, R/o village Nagargaon, Post Nagargaon, PS Gurur,
Tehsil Gurur, Distt. Durg (CG).

---- Appellant**Versus**

1. Ashish Kumar Agrawal S/o Nand Kishore Agrawal, R/o Gujrati Colony, Dhamtari (CG) Manager Hari Om Rice Mill Dhamtari, Hari Om Kutai Kendra, Audogik Ward Dhamtari, CG.
2. The Oriental Insurance Company Ltd., Through Divisional Manager, Divisional Office Malaviya Nagar Durg
3. Rishi Bai Thakur, aged about 35 years, D/o Hira Lal Thakur, R/o Village Kharra, Post Darra, Tah. Gurur, Dist- Durg.

---- Respondents

For Appellant	:	Shri CR Sahu, Advocate.
For Respondent No.2	:	Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****16.01.2018**

1. The present is an appeal under Section 30 of the Workmen's Compensation Act, 1923 (in short, the Act, 1923) assailing the award dated 20.10.2010 passed by the Commissioner, Labour Court, Durg, in Case No.58/WC Act, Fatal/2006. Vide the impugned award, the Labour Court has rejected the claim application on the ground that the claimant has not been able to establish the fact that he is in any manner dependent upon the deceased.
2. Brief facts of the case is that, Vijay Kumar was a bachelor and was working as an employee of the respondent No.1 in his Rice Mill namely Hari Om Rice Mill, Dhamtari. Vijay Kumar died on 12.03.2006 while working in the said Rice Mill. The present appellant, the father

of the deceased had filed a claim application which was initially decided on 16.12.2008 where an award of Rs.2,35,435/- was awarded in favour of the claimant. The liability of payment of compensation was fastened upon the insurance company. The insurance company had challenged the award vide MAC No.226 of 2009. The said appeal was allowed on 09.08.2010 on the limited ground that the Labour Court inspite of an issue having been raised of the dependency of the claimant, has not decided that issue, nor has had in any manner considered the same and for adjudication of this dispute, the matter was remitted back.

3. After remission of the matter, the claimant examined one Roop Singh as their witness and the matter was closed and vide impugned award the claim application has been rejected.
4. Learned counsel for the appellant submits that it is a case where the claimant has led sufficient evidence before the Labour Court proving the fact that he was the father of the deceased and that he was also dependent upon the deceased. It was also the contention of the appellant that other witnesses examined on behalf of the claimant have also stated the same facts so far as dependency part is concerned and thus prayed for setting aside of the award and for holding that the claim application of the claimant was maintainable.
5. Per contra, learned counsel appearing for the insurance company opposing the appeal submits that the finding of the Labour Court is just and proper and is based on evidence available on record. He further submits that the claimant himself in his cross examination

before the court below has accepted the fact that he was not dependent upon the deceased. Further, from the evidence of the claimant it is established that he was residing at a separate place after the second marriage and was also having children from his second marriage and that he had his own source of income and was sustaining himself and his second wife and was not taking any sort of assistance from the deceased. Thus, prayed for rejection of the appeal.

6. Having heard the counsel on either side and on perusal of record, true it is that, so far as claim application under the Act, 1923, is concerned, the same can only be filed by the dependents of the deceased person. Dependency have been defined in Section 2-D of the Act, 1923. The parents are also shown as dependent to the deceased person for the purpose of claiming compensation under the Act, 1923. Only because the parents have been reflected to be as entitled for claiming application by itself would not suffice the claim application. The claimant would also have to show that they are directly either wholly or in part dependent upon the earnings of the deceased person.
7. A perusal of the evidence of the claimant, as also other witnesses, it reflects that the claimant had his own source of income with which he was sustaining himself his second wife and children. Nowhere the claimant in his evidence has stated that he was dependent upon the earnings of the deceased or that the deceased was contributing for the sustenance of the family.

8. At this juncture, it would be relevant to refer the decision of Gujarat High Court in case of Imammiya Sadrumiya Malek and Ors. Vs. Mahmadhusen Nabibbhai Shaikh, 1995 ACJ 674, wherein referring to Full Bench decision of Madras High Court in case of B.M.Habeebullah Maricar Vs. Periaswami, 1977 ACJ 517 (Madras), the High Court of Gujarat in paragraphs 5 & 6 held as under :

“5. I have perused the judgment as well as the evidence on the record. In order to claim compensation, it is necessary for the appellants to prove that they were dependants on the deceased. The decision on this question is vital for the maintainability of the applications. I say soon the strength of a Full Bench decision of the Madras High Court in the case of B.M. Habeebullah Maricar v. Periaswami and Ors. 1977 A.C.J. 517. The Index-notes run as under:

(a) workmens compensation act, 1923, sections 2(1)(d), (n), 8, 9 - Workman - Meaning of - Scope of Section 9-It applies not only to compensation payable to workman alive but also one who is dead - Workman died while on duty - Mother of deceased workman filed compensation application-During the pendency of proceedings mother died-Legal representatives of mother applied for substitution - Commissioner allowed substitution - Whether legal representatives of the claimant are entitled for compensation - Held: no, because the benefit which the act provided was for the workman himself and his dependants and to no others.

(Emphasis supplied)

The Full Bench has elaborately discussed the question as to whether a legal? representative who is not a dependant can claim compensation under the Workmens Compensation Act. The Full Bench has held that question in the negative. It is observed:

The object of the Act was thus to make provision for the payment of Compensation to a workman only i.e. to the concerned employee himself in case of his surviving the injury in question and to his dependants in the case his death (this being so in view of the definition contained in **clause (n) of sub-section (1) of section 2**) and to nobody else (as would appear from the discussion which follows).

It is needless for me to reproduce the discussion, but

suffice it to say that in effect the Full Bench held that a legal representative who is not a dependant is not entitled to claim compensation for the death of the deceased under the Workmens Compensation Act. In the present case, the trial Judge has held that the appellants in both the cases have failed to prove that they were the dependants of the respective deceased. I have read the depositions of both the appellants and it is difficult to come to a contrary conclusion. In both the cases, the appellants have admitted that they are maintaining their family from their own income. There is not an iota of evidence to show that any of the appellants was a dependant on the income of the respective deceased. Mr. R.R. Tripathi, who appeared for the appellants, could point out nothing from the evidence to show that the trial Judge had reared an erroneous conclusion on this point. Since, therefore, this issue has been rightly decided by the trial Judge, other issues do not require consideration.”

9. This court, keeping in view the evidence available on record, particularly the statement of claimant-Kheman Lal Thakur himself of not being dependent upon the earnings of the deceased, this court is of the opinion that the findings of the Commissioner, Labour Court, Durg seems to be in accordance with the provisions of law and is also in consonance to the decision of the Gujarat High Court referred to above.
10. Accordingly, the appeal has no force, the same deserves to be and is hereby rejected.
11. At this juncture, the counsel for insurance company submits that the award amount has already been deposited by it and the same has also been released to the claimant.
12. Given the facts and circumstances of the case, the insurance company shall have liberty of claiming the same from the insured.

Sd/-
(P.Sam Koshy)
Judge