

In the High Court of Punjab and Haryana at Chandigarh

FAO- 335 of 2019(O&M)
Date of Decision:21.1.2019

The Oriental Insurance Company Limited

---Appellant

vs.

Kanta Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Raj Kumar Bashamboo, Advocate
for the appellant

Rekha Mittal, J.

CM No. 1270-CII of 2019

Prayer in this application is for condoning delay of 20 days in
refiling the appeal.

Allowed as prayed for. Delay of 20 days in refiling the appeal
stands condoned.

Disposed of accordingly.

CM No. 1271-CII of 2019

Prayer in this application is for condoning delay of 48 days in
filing the appeal.

In view of averments made in the application and arguments
advanced by counsel for the applicant, application is allowed and delay of
48 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 335 of 2019

The present appeal directs challenge against order dated

23.7.2018 passed by the Commissioner under the Employees' Compensation Act, 1923 (in short "the Act") whereby compensation has been assessed on account of death of Jaswinder Singh @ Bobby, employed as driver on vehicle DCM Eicher bearing No. PB-11-P-7215 owned by respondent No. 2.

Initially, application for compensation was filed by Surinder Singh and Kanta Devi claiming themselves to be parents of deceased Jaswinder Singh @ Bobby. During pendency of proceedings, Surinder Singh, father of deceased passed away and Kanta Devi was impleaded as legal representative of Surinder Singh.

The sole submission made by counsel for the appellant is that Kanta Devi has failed to prove that she is the legally wedded wife of Surinder Singh. The Commissioner has committed a serious error by allowing 70% compensation in her favour and 30% to Manjinder Singh son of Surinder Singh who was not even a party in the claim proceedings.

There is no dispute that Surinder Singh was father of deceased Jaswinder Singh and one of the claimants in the proceedings. The claimants raised a specific plea that after death of Jaswinder Singh @ Bobby future of the family has plunged into dark since he was the only breadwinner of the family and they were fully dependent on him and have no other source of income. Kanta Devi appeared in the witness box and tendered into evidence her duly sworn affidavit. In para 7 of the affidavit, she has reiterated the aforesaid averments that the deponent and her husband were totally dependent upon income of Jaswinder Singh, their son. Counsel has not disputed plea of the claimants that Surinder Singh father of the deceased

was dependent upon income of Jaswinder Singh @ Bobby.

Section 2(1)(d) of the Act defines 'dependant' and reads as under:-

“dependant” means any of the following relatives of a deceased employee, namely:--

(i) a widow, a minor legitimate or adopted son, and unmarried legitimate or adopted daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the employee 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 employee 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;]

A parent who is wholly or in part dependent on the earnings of the employee at the time of his death falls within the meaning of 'dependant' prescribed under Section 2(i)(d) of the Act. As such, Surinder Singh being father of the deceased was entitle to maintain the application for grant of compensation. On death of Surinder Singh, his legal representative(s) can be brought on record. In this context, reference can be made to judgment of

the Rajasthan High Court **Gopal Synthetics vs. Workmen's Compensation Commissioner, Koats and others 1995 ACJ 908.**

Kanta Devi filed an application for deletion of name of Surinder Singh and her impleadment as legal representative of deceased Surinder Singh and the same was allowed by the Commissioner. There appears to be some discrepancy in the testimony of Kanta Devi whereby she had stated that she got married with Surinder Singh in 1978 and his previous wife was alive. She would further state that he had not kept me as such but brought me by performing marriage as she had died. None of the children of Surinder Singh came forward to raise any protest against Kanta Devi being brought on record as legal representative of Surinder Singh nor they asserted their claim for grant of compensation despite the fact that earlier an application under Section 163-A of the Motor Vehicles Act was filed by Surinder Singh, Kanta Devi, Manjinder Singh and two married daughters of Surinder Singh. Even if Kanta Devi could not claim compensation in her independent right as she is the step-mother of Jaswinder Singh @ Bobby, she could pursue the claim on behalf of Surinder Singh. The insurance company would be discharged of its liability by payment of compensation in terms of the order impugned. If there is any other legal representative left behind by Surinder Singh who is also entitled to compensation in respect of death of Jaswinder Singh, he/she would always be at liberty to take recourse to appropriate remedy in law for asserting his/her right in this regard. However, in view of discussion made hereinbefore, no question of law arises that needs adjudication after notice to the other party.

In view of what has been discussed hereinbefore, the present
appeal stands disposed of, in the terms indicated above.

(**Rekha Mittal**)
Judge

21.1.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No