

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice Subrata Talukdar
and**

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 86 of 2022

With

CAN 1 of 2022

M/s. Eastern Coal Fields Ltd & Ors.

-Vs

Smt. Dukhni Bhuiya

For the Appellants : Mr. Shiv Shankar Banerjee,
Ms. Tanushree Dasgupta..... ..Advocates

For the Respondent : Mr. Partha Ghosh,
Mr. Amal Kr. Datta,
Ms. Ria Paul,
Mr. Debasish Biswas Advocates

Heard on : 28.02.2022

Judgment on : 21.04.2022

Hiranmay Bhattacharyya, J.:-

1. This intra court appeal is at the instance of Eastern Coal Field Ltd. (for short "ECL") and is directed against an order dated November 16, 2021 passed by a learned Single Judge in WPA 17269 of 2021. By the order impugned, ECL was directed to pay

Monthly Monetary Cash Compensation (for short “MMCC”) with effect from the date of death of the husband of the writ petitioner.

2. The husband of the writ petitioner/ respondent no. 1 in this appeal was an employee of ECL. He died in harness on September 14, 1999. The respondent no. 1 submitted an application in March, 2020 claiming MMCC with effect from the date of death of her husband. Since such representation was kept pending for a considerable period of time, the respondent no. 1 filed a writ petition which was disposed of on 15.03.2021 by directing the concerned authority to consider and dispose of the aforesaid representation within a specified time. The concerned authority passed an order on 28.05.2021 that the respondent no. 1 may be paid monetary compensation at the applicable rates from immediate effect till she attains the age of 60 years or death, whichever is earlier.
3. Respondent no. 1 challenged the aforesaid order dated 28.05.2021 by filing the instant writ petition. The learned Single Judge allowed the writ petition directing ECL to pay MMCC with effect from the date of death of the husband of the respondent no. 1. Being aggrieved, the instant appeal has been preferred by ECL.
4. Mr. Banerjee, learned advocate for ECL placed reliance upon clause 9.5.0 in NCWA-VI which provides for payment of MMCC and contended that a female dependant has to exercise her option either for monetary compensation or employment. He

contended that ECL is liable to pay MMCC only if the female dependant exercises her option to accept the same and such liability of ECL shall start to run only from the date when such option is exercised and the same cannot relate back to the date of death of the employee concerned. He further contended that the claim for monetary compensation made by the respondent no. 1 from the date of death of her husband is barred by limitation. Mr. Banerjee placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of ***Shiv Dass vs. Union of India*** reported at **(2007) 9 SCC 274** in support of such contention and submitted that the learned Single Judge erred in law by directing ECL to pay MMCC from the date of death of the employee concerned.

5. Mr. Ghosh, learned advocate appearing for the respondent contended that MMCC should be made available from the date of death of the husband of the respondent no. 1 who was working under ECL. He, further, contended that this Court in several matters while dealing with identical facts directed the coal company to pay MMCC from the date of death of the employee concerned and such orders have been duly complied with by the coal company. In support of such submission he relied upon the following judgments- (i) In the case of ***M/s. Eastern Coal Fields Limited & Ors. vs. Dewanti Kumari & Ors.*** reported at **(2016) 3 WBLR** (Cal) 464 (ii) Unreported judgment dated 28th August, 2008 passed in **APOT 518 of 2007** in the case of ***Smt. Chhaya Singh Sardar vs. Coal India Limited & Ors.***, (iii) Unreported

judgment dated 08.03.2013 passed in **APOT 88 of 2013** in the case of ***M/s. Eastern Coalfields Limited & Ors. vs. Bipini Marandi & Ors.***

6. Heard the learned advocates for the parties and perused the materials placed.
7. The short point which arises for consideration in the instant appeal is from which date MMCC is to be paid to a female dependant.
8. The respondent no. 1 claims that she is entitled to such monetary compensation with effect from the date of death of her husband whereas it is the stand of ECL that she is entitled to such compensation with effect from the date when the authority takes a decision to pay such compensation.
9. The right to get employment or monetary compensation in case of a female dependant flows from clause 9.5.0 of NCWA-VI. Workman working in coal mines are governed by the terms of settlement popularly known as National Coal Wage Agreement (for short "NCWA"). NCWA is a bipartite settlement between Coal India and its subsidiary companies and other employers in the coal industry on one hand and the workman represented by several trade unions on the other. NCWA is a welfare measure for their employee and their dependants. Clause 9.5.0 of NCWA- VI which is applicable to the case on hand makes a provision for grant of employment/monetary compensation to the female

dependants of workmen who died while in service. The said clause is extracted below:-

“9.5.0 Employment/Monetary compensation to female dependant

Provision of employment/monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under:

(i) In case of death due to mine accident; the female dependant would have the option to either accept the monetary compensation of Rs. 4,000/- per month or employment irrespective of her age.

(ii) In case of death/total permanent disablement due to cause other than mine accident and medical unfitness under Clause 9.4.0., if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3,000/- per month or employment.

In case the female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment.

(iii) In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0. If no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary

compensation as per rates at paras (i) & (ii) above. This will be effective from 1.1.2000.

(iv) Monetary compensation wherever applicable, would be paid till the female dependant attains the age of 60 years.

(v) The existing rate of monetary compensation will continue. The matter will be further discussed in the Standardisation Committee and finalised.”

10. Sub-clause (i) of 9.5.0 provides that in case of death of an employee due to mine accident the female dependant is entitled to accept the monetary compensation or employment irrespective of her age.

11. Clause (ii) provides that in case of death/ total permanent disablement due to cause other than mine accident and medical unfitness and the female dependant is below the age of 45 years, she will have the option either to accept the monetary compensation or employment. However, if such female dependant is above 45 years of age she will be entitled only to monetary compensation and not employment.

12. Clause (iii) provides that if such deceased workman leaves behind a female dependant as well as a male dependant 12 years and above and no employment has been offered, such male dependant will be kept on a live roster and would be provided employment commensurate with the skill and qualifications when he attains the age of 18 years. It, further, provides that

during the period the male dependant is on live roster, the female dependant will be paid monetary compensation.

13. Sub-rule IV provides that monetary compensation would be payable till the female dependant attains the age of 60 years.

14. In the instant case the employee died while in service but the case of death was other than mine accident. As such the right to claim employment / monetary compensation in the instant case shall be governed by sub-clause (ii) of Clause 9.5.0 of NCWA VI.

15. After reading the said clause as a whole this court is of the considered view that the right of a female dependant below the age of 45 years to claim employment/ monetary compensation accrues immediately upon the death of the employee. In case employment is offered to the female dependant, she has the option to accept either employment or monetary compensation. However, in case employment is not offered to a female dependant falling within clause 9.5.0(ii), the question of exercising option by the female dependant pales into insignificance and the employer in such a case is obliged to pay monetary compensation to such dependant from the date of death in terms of the said clause.

16. NCWA is an agreement between the parties. The rights and liabilities of the parties to such agreement shall be governed by the terms of the said agreement. Clause 9.5.0(ii) does not stipulate an application to be submitted after the death of the

workman to be entitled to monetary compensation under the said clause. The writ petitioner/ respondent became entitled to either monetary compensation or for employment upon the death of her husband in terms of NCWA. She had the option to accept either of the two alternatives.

17. In the instant case, it is not the case of ECL that employment was offered to the respondent no. 1 after the death of her husband and as such the question of exercising option to accept the monetary compensation does not arise as the employer was/is obliged to pay monetary compensation from the date of death of her husband in terms of the relevant clause of NCWA. The writ petitioner cannot be deprived of the benefits of monetary compensation from the date of death of her husband.
18. A co-ordinate bench of this court in ***Chhaya Singh Sardar (supra)*** held that the monetary compensation should be available from the date of death of the deceased employee.
19. Another co-ordinate bench in the case of ***Dewanti Kumari (supra)*** also held that the monetary compensation will be payable to the female dependant of the employee who dies in harness from the date of death of the employee and not from the date when the application for compensation is submitted as the cause of action was continuous starting from the date of death of the employee.

20. In **Bipin Marandi (supra)**, another co-ordinate bench held that in the event employment was not offered, the female dependant was entitled to monetary compensation with effect from the date of death as the widow could not have been deprived of both the benefits. In the said decision, the co-ordinate bench held that monetary compensation was payable with effect from the date of death and not from the date of the order passed by the competent authority allowing monetary compensation.
21. The learned advocate for the ECL placed reliance on the judgments of the Hon'ble Supreme Court of India in the case of **Shiv Dass (supra)** to contend that the claim is barred by limitation. The said judgment was also relied upon by ECL in **Dewanti Kumari (supra)** and the co-ordinate bench distinguished the judgment in **Shiv Dass (supra)** as the same was in respect of payment of pension and not for compensation payable to a female dependant of an employee who dies-in-harness. Furthermore, the co-ordinate bench judgments of this court, as observed herein before, are directly on the matters in issue. This court does not find any reason to differ therefrom.
22. The judgment of a learned Single Judge dated 21.08.2013 in the case of *Smt. Bimli Majhian vs. Coal India Ltd. & ors.* in WP no. 196 of 2013 cited at the Bar is not binding upon this court being contrary to the Division Bench judgments of this court as referred to hereinbefore.

23. The General Manager, Bankola Area directed payment of monetary compensation with immediate effect i.e. from the date of such order. The prayer for payment of MMCC from the date of death of the employee concerned was rejected only on the ground that it would result in sudden financial implication over the company.

24. ECL being State under Article 12 of the Constitution of India should act as a model employer and abide by the terms of the agreement. A model employer being a party to NCWA ought not to have taken a plea which is de hors the terms of the NCWA which provides that monetary compensation shall be available to the female dependant of a deceased employee upon the death of such employee. Financial implication cannot also be a ground for denying the relief as the right to get MMCC is a right which stood vested upon the petitioner in terms of the agreement on the death of such employee. ECL did not make any offer for employment. Therefore, ECL was obliged to pay MMCC to the writ petitioner immediately upon the death of her husband in terms of NCWA. However, ECL sat tight till the writ court passed a direction to take a decision. As such ECL cannot now take the plea of sudden financial implication as a ground for non-payment of monetary compensation from the date of death. For the reasons as aforesaid this court is of the considered view that the respondent no. 1 being the female dependant of the employee is entitled to MMCC with effect from his date of death.

25. In the facts and circumstances of this case this court holds that the impugned judgment and order passed by the learned Single Judge directing payment of MMCC with effect from the date of death of her husband does not suffer from any infirmity and as such the same is not interfered with by this court. The instant appeal along with the application being CAN 1 of 2022 accordingly stand dismissed without, however, any order as to costs.
26. All parties shall act in terms of the copy of the order downloaded from the official website of this Court.
27. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Subrata Talukdar, J.)

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)