

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6760 OF 2021

Sunil s/o. Gorakh Patil

.. Petitioner

Versus

The Station Superintendent
Takarkheda, West Railway,
Tal. Amalner, Dist. Jalgaon

.. Respondent

Mr. Ravindra M. Deshmukh, Advocate for the Petitioner.

Mr. S.S. Deve, Advocate for the Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATED : FEBRUARY 15, 2023.

PER COURT :

1. The Petitioner challenges the order dated 11th May, 2021 passed by the Labour Court in Misc. Application (ECA) No.9 of 2021, rejecting the petitioner's application for withdrawal of the amount of Rs.5,70,720/- deposited by the Takarkheda West Railway, Amalner as compensation towards the death of Raju Gorakhnath Patil, who was the brother of the Petitioner.

2. The facts of the case are, that on 8th January, 2018, the brother of the petitioner expired in a railway accident. At the time of his death, apart from the Petitioner, there was no other legal heir. Misc. Application (ECA) No.9 of 2021 was preferred by the Petitioner for withdrawal of the amount deposited by the Respondent under the provisions of the Employees' Compensation Act, 1923 (for short, "the Act"), which came to be rejected.

3. Heard.

4. Learned counsel appearing for the Petitioner submits that the Petitioner is the legal representative of the deceased and was entitled to receive the compensation deposited by the railway under the provisions of the Act. He has invited the attention of this Court to the death certificate of the other members of family and to the nomination of the Petitioner in the pension account of the deceased. He relies upon the decision of this Court in the case of **Gopal @ Gopichand Sahebrao Patil since deceased Sunil Sahebrao Patil vs. IFFCO TOKIO General Insurance Co. Ltd.**, in Writ Petition No.6176 of 2020, and contends that the Labour Court erred in rejecting the application by placing reliance on the definition of “dependent” provided under Section 2(d) of the Act.

5. Considered the submissions.

6. The compensation amount came to be deposited by the respondent-railway under the provisions of the Act. Section 2(d) of the Act defines the “dependent” as under:

“2. Definitions.-

(a)

(b)

(c)

(d) “dependent” means any of the following relatives of a deceased employee, namely-

(i) a widow, a minor legitimate or adopted son, an 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 or adopted if married and minor or if widowed and minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor, (e) a 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 employee] is alive:

Explanation.- For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (ii), references to a son, daughter or child include an adopted son, daughter or child respectively.”

7. Admittedly, the Petitioner does not fall within the definition of the “dependent” within the meaning of Section 2(d) of the Act. The case of the Petitioner is that he is the legal representative of the deceased and as such entitled to the compensation which has been deposited. At this stage, it will necessary to point out the distinction between a ‘legal representative’ and ‘dependant’ within the meaning of Section 2(d) of the Act. Section 4 of the Act provides for the amount of compensation in various contingencies such as death, permanent total disablement, permanent partial disablement and temporary disablement. In all

cases except where the death results from the injuries, it is employee who would be filing the application for compensation and the provisions of Section 8 of the Act deals with the distribution of the compensation. Sub-section (5) of Section 8 of the Act reads as under:

“8. Distribution of compensation.-

(1)

(2)

(3)

(4)

(5) Compensation deposited in respect of a deceased employee shall, subject to any deduction made under sub-section (4), be apportioned among the dependents of the deceased employee or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependent.”

8. Section 8 (5) of the Act provides that the compensation deposited in respect of the deceased shall be apportioned amongst the dependents of the deceased. The Petitioner claims to be a legal representative of the deceased and hence is not entitled to the compensation as provided in Section 8(5). The purpose of the Act is not limited to payment of compensation to the injured employee but also inures to the benefit of the persons who were related to the employee and deprived of support of maintenance by reason of the death of employee and as such, fall within the definition of the dependent within the meaning of Section 2(d) of the Act. Holistic reading of the provisions of Act 1923 clearly indicates that the dependents are entitled to claim the compensation only in event of

death of an employee. As regards the legal representatives of the employee is concerned, it is now settled by various judicial pronouncements that in event the compensation is claimed on account of the disablement by the employees and during the pendency of the proceedings if the death occurs, then it is the legal representatives who are entitled to step into the shoes of the employee and claim the amount of compensation. The heirs of the deceased dependent are also entitled to claim the amount deposited as compensation even though the dependent died before he could file the claim before the Commissioner and before the compensation could be awarded, inasmuch as the amount of compensation becomes the property of the dependents.

9. The provisions of the Act contemplate payment of lump-sum amount by way of compensation on accident and once the amount is fixed in case of death, it is the dependent within the meaning of Section 2(d) is entitled to claim the same and in case of an accident not resulting in death of the employee, the employee and upon his death during the pendency his dependent and upon the death of the dependents, the legal representative will be entitled to the amount of compensation.

10. The reliance placed by the learned counsel for the Petitioner on the decision in the case of **Gopal @ Gopichand Sahebrao Patil (supra)** is rendered in completely different fact situation, inasmuch as in that case, the claim was raised by the

employee who had sustained injury and during the pendency of the proceedings under the Act, the claimant therein died and as such, the brother of the claimant filed an application for substituting as a legal heir which came to be allowed.

11. As observed above, in the present case, the Petitioner being the brother of the deceased employee is claiming the compensation and for that purpose is required to fall within the definition of Section 2 (d) of the Act. As the Petitioner fails to fulfill the requisite criteria, the Labour Court has rightly rejected the application. It would be worthwhile to note that by the impugned order, the Petitioner is advised to approach the appropriate forum to claim the emoluments and has also directed to the Respondent to withdraw the deposited amount and to deposit the same in any nationalized bank until the final decision of the appropriate Court.

12. In light of the facts above, there is no merit in the petition. The writ petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)