



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH AT NAGPUR**

FIRST APPEAL NO. 572 OF 2024

1) Smt. Saraswati Sudam Manwar,
Aged about 68 years, Occu: Housewife,

2) Shri Sudam S/o. Maroti Manwar,
Aged about 72 years, Occ: Nil,
Both R/o. Kinkheda, Post: Karli, Distt.
Washim.

[Original Non-applicant nos. 2 and 3.]

...Appellants

.. Versus ..

1) United India Insurance Co. Ltd.,
Through its Third Party Hub Manager,
Administrative Building, Near VCA
Ground, Civil Lines, Nagpur.
[Original Non-applicant No. 1]

**2) Smt. Sunita W/o. Narendra
Manwar,** Aged about 48 years, Occ:
Housewife,

3) Akash S/o. Narendra Manwar,
Aged about 28 years, Occ.: Driver,

4) Vikas S/o. Narendra Manwar,
Aged about 27 years, Occ.: Engineer,

5) Sagar S/o. Narendra Manwar,
Aged about 25 years, Occ. Service,

Respondent Nos. 2 to 5 R/o. Kinkheda,
Post: Karli, Distt. Washim.

**[Respondent Nos. 2 to 5 original
applicants]**

...Respondents

Shri R.L. Kadu, Advocate for appellants.
Shri S.W.Sambre, Advocate for respondent nos. 2 to 5.

CORAM : SANJAY A. DESHMUKH, J.

DATED : 29/07/2024

ORAL JUDGMENT

1. This First Appeal is preferred against the judgment and order of the Commissioner Under the Employees Compensation Act and Judge, Labour Court, Nagpur in WCA Application No. (A)-76/2021 dated 03/05/2024.

2. The brief facts of the case are as under:-

The son of the appellants late Narendra died in the vehicular accident in the course of his duty. The application was preferred before the learned Commissioner for getting compensation by wife, sons and daughters. The

application was allowed and the compensation of Rs. 13,83,042/- was awarded.

3. The learned Commissioner held that, the appellants were not dependents of late Narendra. Their prayer for compensation was rejected. Therefore, the appeal is preferred on the ground of existence of dependency of the appellants.

4. Heard the learned counsel for both sides.

5. The learned counsel for the appellants submitted that the appellants have equal right as they were dependent upon the income of deceased Narendra.

6. The learned counsel for the appellants had relied upon the following citations/authorities:-

1) Raziyabee w/o. Shaikh Sattar and anr. V/s. Surrendra S/o. Shivajirao Sangle and anr. [Judgment of this Court in First Appeal No. 1146 of 2011, decided on 17/10/2011]

2) Fulmati Dhramdev Yadav and anr. V/s. New India Assurance Co. Ltd. and anr.

[Judgment of the Hon'ble Supreme Court in Civil Appeal No. 4713 of 2023, decided on 04/09/2023]

3) Smt. Harvinder Kaur Vishakha Singh and anr. V/s. Shri Tarvinder Singh K. Singh [Judgment of this Court in First Appeal No. 1476 of 2007, decided on 17/01/2022]

4) Mamta Devi and ors. V/s. The Reliance General Insurance Company Ltd. and anr. [Judgment of the Hon'ble Supreme Court in Civil Appeal No. 3904 of 2023, decided on 19/05/2023]

7. In ***Raziyabee w/o. Shaikh Sattar and anr.*** (supra), this Court in para 9, held as under:-

“9. Under the definition of "dependant", three categories are made and persons falling under these categories are required to be relatives of the deceased. Under section 2 (1) (d) (i) a widow, a minor son, an unmarried daughter or a widowed mother are considered. A son or daughter who is infirm and wholly dependant on the earnings and even after attaining the majority is brought under category (ii) of the definition of "dependant". Under category (iii) the relatives from (a) to (h) are covered. They may be wholly or partially dependant on the earnings of the employee at the time of his death. Parents may not be having any earning or they may be having some

earning and their dependency on the deceased may be wholly or partially. In other words, the relatives falling in clause (a) to (5) sub-clause (iii) if are financially fully independent, self sufficient due to their earnings, so not dependant, then they cannot be covered under clause (iii) (a) to (h). Condition of financial dependency wholly or partly is not mentioned for the relatives falling in clause (i). Thus, a widow or an unmarried daughter may be employed or earning elsewhere and a widowed mother may be getting her pension, irrespective of their economic dependency, they are to be treated as "dependants". Thus, the categorization in sub-clause (i) to (iii) under sub-section (1) (d) is based on patriarchal social set up and the principle of responsibility. More the degree of responsibility on the deceased higher the dependency, irrespective of earning or the financial condition of the said relative. Firstly parameter of the degree of responsibility is applied thereafter, whole or partial financial dependency of the relatives is considered and then it is categorized in a hierarchy of manner in categories (i), (ii) and (iii). Significantly though it is hierarchial, it is not preferential. So, widow of the deceased from class (i) and dependant parents from class (iii) both are entitle to compensation once they prove that they fall under the definition of dependant. Court on considering other relevant factors may order apportionment of the amount of award among the dependant claimants. If relative falls under one of the three categories, then multiplier as given in the schedule is mathematically made applicable for the purposes of calculation of the amount of compensation. In the present case, parents were earning Rs. 30/- each per day. It is true that they were earning something but they were not financially fully independent. They fall in the category of

"partly dependant" on the earning of the deceased and, therefore, in the purport of definition of "dependant" under section 2 (1) (d) (iii) (b), present appellants are covered. Submissions of learned Counsel for the insurance company that as the appellants were earning some amount and so 50% is to be deducted from the amount can not be accepted. It is to be noted that once the relative falls under the definition of "dependant" under section 2 (1)(d) of the Act, then his own income is not to be taken into account for the purposes of deduction from the amount of the compensation as it is not contemplated under the law. It is a beneficial legislation, so it is to be interpreted in favour of the workman."

8. In ***Fulmati Dhramdev Yadav and anr.*** (supra), the Hon'ble Apex Court held as under:-

"14. The act governing the present dispute, i.e., the Workmen Compensation Act, 1923, has been, vide The Workmen's Compensation (Amendment) Act, 2009, amended, by which the word "workmen" has been substituted by "employees" rechristened as the Employees Compensation Act, 1923."

9. In ***Smt. Harvinder Kaur Vishakha Singh and anr.*** (supra), this Court held as under:-

"32. The aforesaid evidence does not lead to the only conclusion that the vehicle in question belonged to Amrit Roadlines. Tarvinder Singh – opposite party no.2 might have been a partner of Amrit Roadlines. However, indisputably, opposite party no.1 was the registered owner of the said vehicle and the contract of insurance was between opposite

party no.1 and the insurer. The fact that opposite party no.1 was a partner in Amrit Roadlines, thus, does not detract materially from the existence of employer – employee relationship between opposite party no.1 and the deceased.”

10. The learned counsel for the appellants lastly prayed to allow the appeal and grant reasonable amount of compensation.

11. The learned counsel for the respondent nos. 2 to 5 submitted that the appellant no. 1-Smt. Saraswati Manwar was serving as an Anganwadi Sevika and the appellant no. 2-Sudam Manwar is running ration's shop. They have sufficient source of income and hence, they were not dependent upon the income of deceased Narendra.

12. The learned counsel for the respondents further submitted that the appellants are having two more sons, one is residing at Aurangabad and another is residing at Bangalore. They are serving there. But, about third son, no details of his residence and earnings are given by the appellants. They were not dependents upon the income of Narendra.

13. The learned counsel for the respondent nos. 2 to 5/applicants had relied upon the following citation/authority:-

1) Sohanbeer V/s. Workmen's Compensation Commissioner, Muzaffarnagar and ors. [Judgment of Allahabad High Court in Civil Misc. Writ Petition No. 52045/2004]

14. In ***Sohanbeer*** (supra), the Allahabad High Court held as under:-

“7. The learned Counsel for the petitioner further submitted that the respondent No. 2 had remarried, and therefore, she was disentitled from receiving any compensation.

In support of his submission, the learned Counsel for the petitioner placed reliance upon a decision in the Oriental Fire and General Insurance Company Limited v. Shrimati Chandrawati and ors. [AIR 1983 Alld. 174 in which a division bench of this Court held that if a widow remarries, she was not entitled for compensation under the Motor Vehicles Act.”

15. The learned counsel for respondent nos. 2 to 5 lastly prayed for dismissal of appeal.

16. Nobody will dispute the ratios laid down in the

above authority. However, each case must be decided on its factual matrix independently.

17. The following points emerged for consideration which are answered with the reasons and findings as follows:-

- A. Was the learned Commissioner correct while rejecting the prayer of the appellants that they are dependents of deceased Narendra ?
- B. Is an impugned judgment illegal and requires interference ?

18. As far as the family relationship between the appellants and his son Narendra is concerned, it is not disputed fact. However, merely because they are legal heirs of their son, the parents cannot get compensation. They have to establish that they were dependent upon the income of their son before that accident. For that, no any reliable and independent evidence is adduced to show that they were dependents upon the income of deceased Narendra.

19. The learned counsel for the respondents pointed out the cross-examination of the appellant no. 2, in which, he admitted that his wife was working as an Anganwadi Sewika from 01/12/1993 till 30/09/2022. He further admitted that, he was running grocery shop. It shows that they were having their source of income. They have not proved that, they were dependent on the income of deceased Narendra. If the evidence of this appellant no. 2 is considered along with the admitted facts that his two sons are serving at Aurangabad and Bangalore, it shows that he can claim maintenance from them. The information about another son of the appellants is not given as to his source of income are also not disclosed. If these important aspects are considered together with the evidence of the appellants discussed above, the appellants are any how trying to get the amount of compensation though they were not dependent upon on the income of deceased Narendra.

20. The appellants failed to establish that they were 'dependent' as defined in the Employees Compensation Act.

Thus, there is no substance in the grounds of objection of this appeal. Therefore, the argument of the learned Advocate for the appellants is not accepted.

21. The appellants failed to establish any justifiable ground to allow this appeal. There is no scope for interference in the impugned judgment. Hence, point nos. 1 and 2 are answered in the negative. The appeal being devoid of merits deserves to be dismissed. The appeal is dismissed. No costs.

22. The learned counsel for the appellants seek four weeks' time to proceed against this judgment in the Hon'ble Supreme Court. It is granted as prayed.

[SANJAY A. DESHMUKH, J.]