

(2014) 02 RAJ CK 0176

Rajasthan High Court

Case No: Civil Misc. Appeal No. 1162 of 2001

Asstt. Engineer

APPELLANT

Vs

Lali Devi

RESPONDENT

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Date of Decision: Feb. 21, 2014

Acts Referred:

- Employees Compensation Act, 1923 - Section 2(d), 2(dd), 2(n), 30

Citation: (2015) 3 ACC 365 : (2015) ACJ 1028 : (2014) 2 LLJ 390 : (2014) LLR 749

Hon'ble Judges: Alok Sharma, J

Bench: Single Bench

Advocate: J.K. Singhi, Sr. Advocate and Ravindra Pal, Advocate for the Appellant; Nishant Sharma, Advocate for the Respondent

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### Judgement

Alok Sharma, J.

This civil misc. appeal u/s 30 of the Employee's Compensation Act, 1923 (hereinafter "the Act of 1923") has been filed against the judgment dated 17.01.1998, passed by the Employee's Compensation Commissioner, Dausa (hereinafter "the Commissioner") whereby the respondent-applicant (hereinafter "the applicant") was allowed to avail disbursement of a sum of Rs. 1,82,370/- deposited as compensation by the appellant (hereinafter "the non-applicant") for the death of one Laxmi Narain, who was at the relevant time employed with the non-applicant--the Assistant Engineer. The facts of the case are that the applicant Smt. Lali Devi wife of Shri Babulal filed an application for disbursement of compensation amount of Rs. 1,82,370/- deposited by the non-applicant as compensation for the death of Laxmi Narain as employee of the erstwhile Rajasthan State Electricity Board (RSEB) who died in the course of his employment before the Employee's Compensation Commissioner, Dausa under the Act of 1923. It was stated that her father Laxmi Narain was a workman in the employment of the Assistant Engineer of the erstwhile Rajasthan State Electricity Board, Dausa [now the Jaipur Vidhyut Vitran Nigam Ltd. (JVNL)]. In the course of his employment and reasons attributable thereto, Laxmi

Narain expired in an electrical accident on 28.02.1997. The applicant submitted that she was the only surviving legal heir of the deceased Laxmi Narain and also claimed to be a dependant. In these circumstances, she claimed disbursement of the compensation of a sum of Rs. 1,82,370/- as deposited on 29.09.1999 by the non-applicant with the Commissioner. On notice, the non-applicant appeared and opposed the claim petition. It was submitted that the applicant was not a dependant of her father, the deceased Laxmi Narain and in fact married to one Babulal on her own say about eight years prior to the death of Laxmi Narain. In these circumstances, it was prayed that the claim petition be dismissed. However, vide order dated 17.01.1998, the application for disbursement was allowed and the compensation of Rs. 1,82,370/- earlier deposited by the non-applicant apportioned between the claimant Lali Devi and her two children as under:

(1) Rs. 42,370/- to be paid in cash to Smt. Lali after deducting the Court fees of Rs. 366/-

(2) Out of remaining Rs. 1,40,000/-, FD of Rs. 40,000/- each in the name of the two sons who are of two years each the amount payable on their maturity.

(3) Out of remaining Rs. 60,000/-, FD of Rs. 40,000/- for a period of one year in favour of Smt. Lali.

(4) Remaining amount of Rs. 20,000/- to be deposited in fixed deposit for a period of six months in the name of Smt. Lali.

2. Hence this appeal.

3. The question of law which arises in this appeal is as to whether the Commissioner under the Act of 1923 could pass an order of disbursement of compensation in favour of the applicant in spite of her having been married eight years prior to the death of her father and not being a dependant within meaning of Section 2(n) of the Act of 1923.

4. Mr. J.K. Singh, Sr. Advocate with Mr. Ravindar Pal, appearing for the non-applicant, has submitted that in terms of extant definition of "workman" u/s 2(n) of the Act of 1923, a reference to the workman under the Act was limited to the workman himself in the event of a claim for compensation for an injury and his dependants or any of them where the claim for compensation was for the death of a workman. Counsel has submitted that Section 2(d) of the Act of 1923 defines a dependant only to mean the relatives as detailed in clause (i) to clause (iii) thereof. Thus a married daughter of a workman as the respondent-claimant could not be included within the meaning of dependant under the Act of 1923. It was submitted that consequently the claim at the instance of a married daughter of a workman or even an application for disbursement by her for the compensation deposited by the employer occasioned by the death of a workman in the course of employment was not maintainable. Reference has been made to the Full Bench judgment of the Madras High Court in

the case of [B.M. Habeebullah Maricar Vs. Periaswami and Others,](#) in support of the contention.

5. Mr. Nishant Sharma, appearing for the applicant, has supported the impugned judgment dated 17.01.1998, passed by the Commissioner and submitted that in the event where there was no other dependant of a deceased workman, it would work gross injustice to LR of the deceased workman who did fall within the definition of defendant u/s 2(d) of the Act of 1923. He submits that the applicant was a nominee of the deceased workman in personal accident scheme of the non-applicant--the erstwhile Rajasthan State Electricity Board and the Act of 1923 being a socio-economic beneficial legislation for the poorer sections of society, the judgment of the Commissioner impugned in this appeal should be sustained.

6. I have heard the counsel for the non-applicant and the applicant.

7. The Workmen's Compensation Act, 1923, now Employee's Compensation Act, is a complete code in itself to provide for payment to certain class of claimants i.e. the workman or their dependant of compensation for injury/death by an accident arising out of and in the course of the workman's employee's employment. The right to compensation has to be of necessity thus to be determined under the provisions of the Act of 1923. Section 2(d) of the Act of 1923 which defines "dependant" does not include a married daughter. Only a dependant is entitled to compensation and no person by virtue of being a mere LR of the deceased workman is entitled to compensation under the Act of 1923. Extant section 2(n) of the Act of 1923 defined "workman" as also does the now operative Section 2(dd) (which defines an "employee") to mean the workman/employee himself in the event of being an injury case and his dependants or any of them in the case of a workman's/employee's death. It is thus clear that only a dependant as defined under the Act of 1923 can be entitled to compensation or claim for disbursement of compensation where it had been deposited by the employer with the Commissioner following the death of a workman arising out of and in the course of employment. The said position has recognized by the Full Bench of Madras High Court in the case of B.M. Habeebullah Maricar v. Periaswami and Others (supra). As the daughter of the deceased workman married several years before the accident of 28.02.1997 leading to the death of Laxmi Narain, the applicant was thus not a dependant of the deceased workman and not entitled to any compensation under the Act of 1923.

8. Consequently, I would allow this appeal and set aside the judgment dated 17.01.1998, passed by the Commissioner. The amount deposited by the non-applicant shall be refunded to JVVNL. The civil misc. appeal is allowed accordingly.