

**(1994) 02 AHC CK 0038****Allahabad High Court****Case No:** F.A.F.O. No. 304 of 1979

Singhal and Co.

APPELLANT

Vs

Hussain Ali and Another

RESPONDENT

**Date of Decision:** Feb. 3, 1994**Acts Referred:**

- Workmens Compensation Act, 1923 - Section 30
- Workmens Compensation Rules, 1924 - Rule 20(2)

**Citation:** (1994) ACJ 650 : (1994) 68 FLR 905 : (1995) 1 LLJ 78**Hon'ble Judges:** J.P. Semwal, J**Bench:** Single Bench**Advocate:** Vijay Ratan Agrawal and P. Bhargava, for the Appellant; U.N. Sharma, for the Respondent**Final Decision:** Allowed**Judgement**

J.P. Semwal, J.

This is an appeal u/s 30 of Workmen's Compensation Act against the order dated March 2, 1979 passed by the Workmen's Compensation Commissioner, Allahabad Region in Compensation Case No. 7 of 1978, awarding Rs. 18,000/- as compensation to respondent claimant from the appellant company.

2. The facts leading to the present appeal may be summarised as below:

Respondent No. 1 Hussain Ali made an application under Rule 20 of Workmen's Compensation Rules, 1924 before the Workmen's Compensation Commissioner, Allahabad for compensation. The claimant Hussain Ali is the father of Manauwar Ali deceased who was employed with the appellant Company. The appellant Company was given contract by the respondent No. 2 IFFCO for construction of residential quarters in IFFCO town, Phulpur. During the course of construction Manauwar Ali was employed by the appellant as visit. On May 12, 1978, Manauwar Ali died on account of falling of wall in the course of his employment. The respondent No. 1 is

the father of the deceased and as father he made an application u/s 20 of the Workmen's Compensation Rules. The copies of the application were sent to the appellant and respondent No. 2 and both filed written statements. Both sides produced evidence, oral as well as documentary, before the Workmen's Compensation Commissioner. Various objections were raised before the Workmen's Compensation Commissioner by the appellant company but they were overruled by the Commissioner and he held the deceased Manauwar Ali as workman by virtue of Section 2(h) read with Schedule 2 and held the respondent No. 1 to be entitled to a compensation of Rs. 16,000/- being legal heir of the deceased. Aggrieved by this order, the appellant company has preferred this appeal.

3. I have heard the learned counsel for the appellant and the respondent No. 1 and have pursued the record of the case.

4. The learned counsel for the respondent No. 1 raised a preliminary objection regarding the maintainability of appeal and argued that in an appeal u/s 30 of the Act, a substantial question of law should be involved and no. such plea has been taken. No doubt the appeal u/s 30 of the Act is maintainable only when a substantial question of law is involved in the appeal. The appeal does not lie on a question of fact. The question whether the accident has been proved is a question of fact. A finding about the height of wall is also question of fact. The question whether at the time of accident the workman was working or not is also a question of fact. A finding about quantum of wages drawn by the workman is a question of fact. Whether the workman was on duty is a question of fact. The question whether a particular person is a workman is question of fact, but the question whether he is the workman within the meaning of the Act is substantial question of law. Similarly the question whether a person is dependent within the meaning of the Act is substantial question of law. In the present appeal, the appellant has taken a number of pleas in the memo of appeal and pleas Nos. 1, 2, 7 and 8 clearly involve substantial questions of law which are regarding the interpretation of the meaning of dependant and workman under the Act. Hence I do not find any force in the preliminary objections.

5. The pleas of the appellant on question of fact cannot be entertained in this appeal and hence it is not necessary to mention about the same. The learned counsel for the appellant, however, assailed the judgment of the Workmen's Compensation Commissioner and the claim of respondent No. 1 itself. It was argued that the application was not maintainable under Rule 20 as the respondent No. 1 had not mentioned in the application as to on what basis he claims to be entitled to move the application. No doubt in the application, which is in form G made by the applicant, para 2 simply mentions that the applicant is dependant of the deceased, being his father. This by itself is not fatal and it is clear that the applicant made claim being a dependant of the deceased. It is for the claimant to prove this fact by leading evidence. It was also pointed out that compliance of Rule 20 (2) aforesaid

has not been made. Sub-rule (2) of Rule 20 reads-

"There shall be appended to every such application a certificate, which shall be signed by the applicant, to the effect that the statement of facts contained in the application is to the best of his knowledge and belief accurate".

6. From Annexure-B which is application under Rule 20 it is clear that the compliance of aforesaid sub-rule has not been made. The original record is not before the Court. However, non-compliance of Rule 20(2) aforementioned does not have the effect of rendering application non-maintainable. At the most, it is an irregularity and does not affect the legality of the trial (See Makhanlal Marwari v. Awadh Behari Lal (1958 II LLJ 682) The contention of the respondent No. 1 has, therefore, no force.

7. Next it was urged that Workmen's Compensation Commissioner has not framed issues in terms of Rule 28 and has not recorded his judgment in terms of Rule 32 of the Rules. It was also pointed out that the respondent No. 1 had moved an application before the Workmen's Compensation Commissioner, Allahabad on September 14, 1978 praying that the following issue may be framed:

"Whether the appellant (father of the deceased) is a dependant within the meaning of the Workmen's Compensation Act?"

8. It was also prayed that this issue may be decided after the disposal of four issues framed on March 14, 1978. Certified copy of the judgment of the Workmen's Compensation Commissioner does not mention about the issue having been framed nor there is separate finding issue-wise. However, from the application dated 14th September, 1978 Annexure-A it is evident that four issues had been framed. The contention of the learned counsel for the appellant is that the Workmen's Compensation Commissioner has awarded compensation without giving his finding that the applicant respondent No. 1 is dependant within the meaning of Section 2(d) of the Act and that he has not discussed any evidence in this regard. It is further urged that the father of the deceased can be considered as dependant only if it is shown that he is wholly or partially dependant on the earning of the deceased. Section 2(d) defines dependant:

"Dependant" means any of the following; relatives of a deceased workman, namely:

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

(ii) if wholly dependant on the earnings of the workman 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 dependant on the earnings of the workman at the time of his death,

(a) a widower,

(b) a parent other than a widowed mother

(c)..... to (h)....."

9. It is evident from the aforesaid clauses that there are three categories of claimants. The claimant under Sub-clause (i) is dependant merely on the basis of relationship mentioned therein. Second category mentioned in Sub-clause (ii) has to establish the relationship and that they are infirm and were wholly dependant on the earnings of the workman deceased at the time of his death. The third category mentioned in Sub-clause (iii) have to establish relationship mentioned therein, and further that they are wholly or in part dependant on the earnings of the deceased at the time of his death.

10. It has been next argued that in the present case, the Workmen's Compensation Commissioner has not given any finding on the issue whether the father was wholly or partially dependant on the earnings of the deceased. The original record is not before the Court. The learned counsel for the respondent No. 1 read over the statement of Hussain Ali from the copy he was having with him which showed that in his statement the respondent No. 1 claimed to be dependant of the deceased workman. The deceased was married but the respondent No. 1 did not disclose her name as he wants to grab the amount of compensation. A persual of the judgment of the Workmen's Compensation Commissioner clearly goes to show that he has not dealt with this point at all and has not discussed the evidence and has not given any finding whether respondent No. 1 was wholly or partially dependant on the earnings of the deceased at the time of his death. He has also not taken into consideration that widow of the deceased is alive and even then the father is claiming the entire amount of compensation. No doubt father is dependant partially but there must be positive and cogent evidence in that regard and Workmen's Compensation Commissioner has to give his finding after considering the evidence and the circumstances of the case. The Workmen's Compensation Commissioner has failed to consider the meaning of the word "dependant" under the Act as quoted above and has awarded compensation to father only on the basis of his being related to the deceased workman, being the father. As already stated, it is only in Sub-section (i) of Section 2 of the Act that mere status of dependant entitles them to compensation but in case of father who is under category (iii) of Section 2(d), it has to be specifically established that he was wholly or partially dependant on the earnings of the workman at the time of his death besides establishing the relationship. The Workmen's Compensation Commissioner has erred in not interpreting the term "dependant" in terms of Section 2(d) of the Act and has not applied his mind to the evidence on record and has not framed any issue on this point and has not discussed the same in his judgment. The finding of the Workmen's Compensation Commissioner is vitiated by committing error in law. This Court in appeal u/s 30 of the Act cannot examine the question of fact after scrutinising the evidence and therefore, the case has to be remanded to the

Workmen's Compensation Commissioner for deciding the claim of the claimant-father in accordance with the provision of the Act after framing necessary issues and giving finding on them. The judgment of Workmen's Compensation Commissioner cannot be sustained and is liable to be set aside and the case has to be remanded to the Workmen's Compensation Commissioner for deciding the claim after considering the evidence which was led before him by the parties and after considering the provisions of the Act and Rules as stated above. He will frame issues on the pleadings of the parties and will then after considering the evidence already produced and any further evidence which the parties may like to adduce or which the Workmen's Compensation Commissioner may require for the just and proper decision of the claim.

11. For the reasons stated above, the appeals allowed and the case is remanded back to the Workmen's Compensation Commissioner for deciding the claim in accordance with law and the observations made above.