

**(2002) 10 AHC CK 0154**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 32507 of 1992

Smt. Padma Kshira Sagar

APPELLANT

Vs

Prabahdhak (Manager) Uttar  
Pradesh Rajya Chini Nigam

RESPONDENT

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**Date of Decision:** Oct. 3, 2002

**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 33C(2)

**Citation:** (2003) 2 AWC 937

**Hon'ble Judges:** Anjani Kumar, J

**Bench:** Single Bench

**Advocate:** C.K. Parikh, for the Appellant; Shakti Nigam, H.S. Nigam and S.N. Srivastava and S.C., for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Anjani Kumar, J.

This writ petition was heard by me on 3rd October, 2002 and after hearing learned counsel for the parties, I have allowed the aforesaid writ petition for the reasons to be recorded later on. Now here are the reasons for allowing the aforesaid petition.

2. Petitioner, Smt. Padma Kshira Sagar, wife of Late Balmukund Kshira Sagar by means of present writ petition under Article 226 of the Constitution of India challenges the order/award dated 2.5.1992, passed by Labour Court, U. P. Varanasi in Adjudication Case Nos. 16 of 1989, 18 of 1991 and 19 of 1991, a copy whereof has been annexed as Annexure-10 to the writ petition.

3. Since the facts and controversy of all the aforesaid three cases were same, therefore, all the cases were clubbed together and decided by the labour court by common award dated 2.5.1992. The facts as stated in the impugned order are that

husband of the petitioner, namely, Balmukund Kshira Sagar filed Misc. Case. No. 16 of 1989 against Director, M/s. Ratna Sugar Mills Corporation Ltd., Varanasi and another with the claim that the aforesaid Balmukund Kshire Sagar (who shall here-in-after be referred to as the "workman") is entitled to receive a sum of Rs. 43,571.06 from the respondents-employers. The aforesaid claim was filed by the workman u/s 33C(2) of the Industrial Disputes Act, 1947 (Central Act). Since thereafter workman Balmukund Kshira Sagar died, the petitioner filed another Misc. Case Nos. 18 of 1991 and 19 of 1991 on the ground that her name may be substituted in place of her deceased husband Balmukund Kshira Sagar and whatever claim of her husband is due against the employers, she may be allowed to pursue the case aforesaid, filed by her husband by way of abundant caution. She claims that after the death of her husband she is entitled to the claim of money which her husband would have, had he not died. The labour court has consolidated all the aforesaid three cases together and decided by the common award. The labour court has put a question for decision as to whether the petitioner, the wife of deceased workman, is entitled to continue with the Misc. Cases u/s 33C(2) of the Act or not? The preliminary Issue has been formulated by the labour court as to whether after the death of Balmukund Kshira Sagar (deceased), the heir of deceased workman (the wife) can be allowed to continue by substituting herself and whether the heir or his wife is entitled to continue the proceedings of Misc. Case No. 16 of 1989 or not and whether the heir of the deceased workman can continue with the claim u/s 33C(2) of the Act for which the proceedings were already on u/s 33C(2) of the Act by the workman concerned. The labour court has referred to the decision of this Court in U. P. Electric Supply v. Meena Chatterji, 1970 (21) FLR 125. wherein this Court ruled that since Section 33C(2) of the Act, Section 6H (2) deals with the matter of dues and in Section 33C(1) of the Act, workman and his heirs can file application for the dues, but u/s 33C(2) of the Act, read with Section 6H(2) only workman can file application for dues, therefore, the application can be filed only by the workman concerned and not by his heirs. The employers have further relied upon a decision of Orissa High Court, in Harmani Nayak v. Manager 1978 Lab IC 1630, which has reiterated the same view. The another decision cited by the employers before the labour court is of Delhi High Court in Yadram v. Veer Singh 1974 Lab IC 970. The heir (wife) has relied upon a decision in Moti Lal P. P. Sugar Mills v. Labour Court, Kanpur 1978 Lab IC 1129 , which is a decision of Division Bench of this Court in which the Division Bench of this Court has taken into consideration the case of U. P. Electric Supply v. Meena Chatterji, which holds that the heirs of the workman can continue the proceedings and they are entitled to pursue the claim to the extent the claim is computable in terms of money, which was found due by the Court, had the workman been still alive. A distinction has been drawn by the labour court in the impugned order that the case of Moti Lal P. P. Sugar Mills, which is a decision of Division Bench of this Court is a case relating to reference u/s 10 of the Central Act and the labour court has come to the conclusion that in view of the distinction that reference was u/s 10 whereas in the present misc. cases the application was filed u/s

33C(2) of the Act, which is pari materta of the provisions of Section 6H (2) of the U. P. Industrial Disputes Act, therefore, the decision of Moti Lal P. P. Sugar Mills will not help the petitioner and the view taken by the learned single Judge in the case of Meena Chatterji is more closer and applicable to the fact of the present case. Learned counsel for the petitioner Sri C. K. Parikh further relied upon a decision in support of his contention aforesaid, which is in [Rameshwar Manjhi \(Deceased\) through his son Lakhiram Manjhi Vs. Managemenmt of Sangramgarh Colliery and others](#), which has been decided by Hon"ble Supreme Court, wherein it is held by the Apex Court, after going through the decisions of different High Courts in the following words :

"We do not agree with the view-point of Delhi and Orissa High Courts to the effect that the claim for computation under subsection (2) of Section 33C of the Act dies with the death of the workman. It is difficult to understand why a claim of money which became payable to the deceased workman should not be claimable upon satisfaction of other relevant conditions, by the heirs of the deceased workman by making a claim under Sub-section (2) of Section 33C of the Act. Having regard to the well established principle that all causes of action except those which are known as dying along with the death of a person must survive to his heirs, the cause of action created in favour of workman under Sub-section (2) of Section 33C of the Act should in normal circumstances survive to the heirs and therefore, the Apex Court has approved the view taken by the Bombay High Court and also the view taken by the Division Bench of this Court in Padarnapat Sugar Mills" case."

After discussing the different cases of different High Courts, the Apex Court has ruled as under :

"We, therefore, hold that on the death of the workman, even when the reference is of an industrial dispute u/s 2A of the Act, the Tribunal does not become functus officio or the reference does not abate merely because pending adjudication, the workman concerned dies. It is open to the heirs and legal representatives of the deceased workman to have the matter agitated and decided."

4. In view of the aforesaid, with which I am in full agreement and needless to say that the view taken by the labour court is liable to be quashed and is hereby quashed. The writ petition, therefore, succeeds and is allowed. The order dated 2.5.1992, Annexure-10 to the writ petition is quashed. The labour court is directed to decide the case, out of which the aforesaid misc. cases are arisen as admittedly the petitioner, wife of deceased workman can continue the proceedings of the misc. cases, which have been filed by her husband after the death of her husband.

5. In view of what has been stated above, this writ petition succeeds and is allowed. The order dated 2.5.1992, Annexure-10 to the writ petition, is quashed. Since the matter is fairly old, the labour court is directed to decide the aforesaid misc. cases within a period of six months from the date of presentation of a certified copy of this

order, in the light of the observations made above. However, the parties shall bear their own costs.