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Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 263 of 1973

In the matter of Reference under Section 27 of the Workmen's Compensation Act, regarding Madho Singh

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 15, 1979

Acts Referred:

- Workmens Compensation Act, 1923 - Section 2, 2(1)(d), 2(1)(n), 27, 3

Hon'ble Judges: G.P. Singh, C.J; R.C. Shrivastava, J

Bench: Division Bench

Advocate: Sohan Choudhary for Claimant, for the Appellant;

Judgement

G.P. Singh, C.J.
This is a reference made by the Commissioner for Workmen''s Compensation u/s 27 of the Workmen''s Compensation Act, 1923. The facts, briefly stated, are that one Amar Singh was employed as a temporary Mate in the Central Railways. Amar Singh died on 16th April 1971 as he was knocked down by a railway engine while on duty. The Divisional Accounts Officer, Central Railway, deposited Rs. 6,000 as compensation on the death of Amar Singh. The only dependant as defined u/s 2(d) of the Act left by the deceased was his widowed mother who also died before she could file any claim application. The widowed mother left behind as her heir Madho Singh. Madho Singh is a brother of the deceased Arnar Singh but he is not a dependant as defined in the Act. Madho Singh applied to the Commissioner for payment of compensation. On these facts the Commissioner has referred the following questions of law for our answer:

(1) Whether the heir of a deceased dependant can claim the amount deposited as compensasion under the Workmen''s Compensation Act, 1923 even though dependant

dies before he or she could file a claim before Commissioner for Workmen''s Compensation and before compensation is awarded to the dependant by the Commissioner ?

(2) Whether the amount of compensation becomes the property of dependants and vests in them as soon as it is deposited even before the Commissioner for Workmen''s Compensation passes an order of disbursement ?

2. The Workmen''s Compensation Act, 1923, is an Act to provide for the payment by certain classes of employers to their workmen of compensation for injuries by accidents. Section 2(1)(n) of the Act defines "workman". The concluding portion of this definition says that "any reference to workman who has been injured shall, where the workman is dead, includes a reference to his dependants or any of them." The word "dependant" is defined in section 2(1)(d) to mean relatives of a deceased workman enumerated therein. Section 3 of the Act provides that if a personal injury is caused to a workman by accident arising out of and in the course of his employment his employer shall be liable to pay compensation in accordance with the provisions of Chapter II. Section 4 of the Act fixed the amount of compensation payable u/s 3. Where death results from the injury the amount of compensation payable is as given in Schedule IV. Neither section 3 nor section 4 indicates as to whom the compensation is payable, but a look at section 8, which deals with distribution of compensation in respect of a workman whose injury has resulted in death, goes to show that the compensation is payable to the dependants as defined in the Act. Sub-section (1) of sections provides that no payment of compensation in respect of a workman whose injury has resulted in death shall be made otherwise than by deposit with the Commissioner. On deposit of compensation under sub-section (1), the Commissioner proceeds under sub-section (4) to deduct from the amount deposited the actual amount of the workman''s funeral expenses not exceeding Rs. 50 for payment to the person by whom such expenses were incurred. The Commissioner then causes a notice to be published or served on each of the dependants calling upon the dependants to appear before him for determining the distribution of compensation. If the Commissioner is satisfied after inquiry that no dependant exists, he repays the balance of money to the employer by whom it was deposited Sub-section (5) then provides that compensation deposited is apportioned amongst the dependants of the deceased workman in such proportion as the Commissioner thinks fit. The Commissioner may in his discretion allot the entire amount of compensation to one of the dependants. Section 9 of the Act which bears the heading "Compensation not to be assigned, attached or charged" reads as follows:

Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set-off against the same.

3. The question whether their right to compensation vests in the deceased workman''s dependant existing at the time of his death and passes on to his heirs if the dependant dies before receipt of the amount of compensation, was first considered by a Division Bench of the Calcutta High Court in Pasupati Dutt Vs. Kelvin Jute Mills, . In that case it was held that though section 3 which imposes a liability on the employer to pay compensation does not specify the person or persons to whom it is payable, section 8 makes it clear that nobody has any right to it except the dependants. It was pointed out that though the Commissioner has got a discretion in the matter of appointment of compensation and he can allot the entire amount to one of the dependants, even so it can be said that the right accrues to the dependants as a class subject to the Commissioner''s right of distribution in such way as he thinks proper; and in case of sole dependant it vests absolutely; and as it is a right which has been given to the dependants because of the workman''s death, it must be deemed to accrue at the time of his death, there being no ground of postponing it to a further date. It was further pointed out that the duty of the Commissioner to refund the compensation arises only when there is no dependant "in existence" and this must mean in existence at the time of the workman''s death. In holding that any other construction would be frustrating the object of the Act and place the right to compensation on an uncertain contingency, B.K. Mukherjee, J. (as he then was), made the following observations:

The enquiry before the Commissioner may be delayed for various reasons, and people who really depended upon the earnings of the deceased workman might the before or pending the enquiry and even just before the Commissioner makes the award. To say that the Commissioner is bound to refund the money to the employer under such circumstances would be to put an extremely narrow and unjust construction upon the section, which is not borne out by the purpose of the Act or the actual words used. As my Lord the Chief Justice pointed out in his Judgment, the House of Lords in England took a similar view in United Collieries Ltd. v. Simpson (or Hendry) 1909 A C 383, upon construction of the English Workmen''s Compensation Act of 1906. The English Act also provided for payment of the compensation into the County Court, which could deal with it in its discretion, and divide it in such manner as it thought best among the dependants of the deceased workman. It is true that there was no provision for refund of the money to the employer in the English Act of 1906, but that is really not very important as on total absence of any dependant the money could not really be retained by the County Court, and would have to be returned to the employer in exercise of its inherent powers.

Mr. Banerjee for the respondent lays stress on the fact that in the English Act of 1925 an express provision was inserted in section 2, clause (3) under which the legal representative of a dependant had no right to the compensation payable to the latter, but here again it is significant to note that the Indian Act was amended on various occasions even after 1925, but the Indian Legislature did not think it proper to introduce any provision like the one mentioned above. It may be said indeed that to hold that the dependant''s right to compensation is a vested right which passes to his legal

representative would be to put an additional burden upon the employer, the effect of which might be to enrich the strangers and persons totally outside the scope of the Act, but the result would be exactly the same if the dependant dies the very day after receiving the compensation.

The same view of section 8 was taken by a Division Bench of the Madras High Court in Abdurahiman v. Beeran Koya A I R 1938 Mad. 402. Section 9 of the Act, it seems, was not referred to before the Calcutta High Court in Pasupati Dutt"s case. This section Was, however, referred to by the Madras High Court in Abdurohiman"s case. The argument on the basis of section 9 was that the amount of compensation cannot pass by operation of law i.e. by succession in view of section 9. Negativing this argument, the learned Judges of the Madras High Court observed as follows:

The other part of the section in section 9 is that no lump sum or half yearly payment shall pass to any person other than the workman. This contemplates that the compensation is payable to a workman and cannot be claimed by any person by operation of law. Therefore before that clause can come into operation there must be an existing workman to whom it is payable and it has no application to a case where the workman died before the award of compensation. In the case of a workman who is alive and to whom the compensation is payable, the Act says that it must be paid to him and it should not go to any other person, for example, if he becomes an insolvent, his trustee in bankruptcy cannot claim the sum for the benefit of his creditors.

The question whether compensation can be claimed by heirs of the dependant of a deceased workman who was not paid the compensation before his death was also considered by the Andhra Pradesh High Court in Radhakrishna Rice Mill v. Applelacharvulu (1958) 1 AW R 316. The Andhra Pradesh High Court followed the Calcutta and Madras decisions referred to above. The cases mentioned above had established the law that the right to compensation vests in a dependant and passes on to his heirs in case of the dependant"s death before receipt of compensation. If he is also noteworthy that before 1976 the Act was amended on 10 occasions after 1937, yet no amendment was made to displace the law established as above by judicial decisions which impliedly shows that the decisions had correctly interpreted the Act.

4. A Full Bench of the Madras High Court, however, in B.M. Habeebullah Maricar Vs. Periaswami and Others, overruled its earlier decision in Abdurahiman"s case. It was held in this case that Abdurahiman"s case had not correctly interpreted section 9 of the Act in the light of the definition of workman and the correct interpretation is that there is no passage of right of compensation from a dependant to his heirs if the dependant dies before receipt of the compensation u/s 8. With great respect, we are unable to agree with the view taken by the Full Bench of the Madras High Court. The relevant portion of section 9 of the Act reads as follows:

No lump sum or half monthly payment payable under this Act shall pass to any person other than the workman by operation of law.

Reading the word "workman" in the light of the definition given in section 2(1)(n) the above quoted portion of section 9 will read as under:

No lump sum or half monthly payment payable under this Act shall pass to any person other than the workman and where the workman is dead, his dependants, by operation of law.

Now the section quoted as above deals with prohibition of passing of compensation by operation of law. Ordinarily devolution by succession is also a mode of passing of property by operation of law, but in such a case there can be no question of passing of any property to the deceased. Had the intention u/s 9 been to prohibit passing of property by devolution, the words "other than the workman" would not have been there. The section would have been simply worded as below:

Save as provided by this Act, no lump sum or half monthly payment payable under this Act shall------pass to any person by operation of law.

The words "other than the workman" signify that the workman or his dependant is in existence when the question of passing of property by operation of law arises. In our opinion, the earlier decision of the Madras High Court was correct that passing of property by operation of law which is prohibited or restrained by section 9 does not include passing of property by devolution or succession, but refers to other cases of passing of property by operation of law such as insolvency where the person whose property passes by operation of law is in existence. For example, even it the workman or in case of his death his dependant is adjudicated insolvent the amount payable to him under the Act will not pass by operation of law and vest in the Court or receiver and will be payable in accordance with the Act to the workman or the dependant, as the case may be it is true, as observed by the Full Bench of the Madras High Court that the earlier Division Bench decision of that Court did not expressly refer to the definition of workman which includes a dependant in case of death of the workman, while construing section 9, but in our opinion, the criticism is not correct that if the definition is noticed and the section is read in the light of that definition it will cover a prohibition for passing of compensation by devolution. As earlier shown by us, reading section 9 along with the definition of workman makes no difference. The point made out by the earlier case is that the words "other than the workman" show that the passing of property by operation of law contemplated by section 9 is of that type which recognises the presence of the workman. Reading section 9 with the aid of the definition as contained in section 2(1)(n) only shows that the passing of property by operation of law prohibited therein recognises the presence of the workman or in case of the death of his dependants. The section has absolutely no application for deciding the question of right to compensation on the death of the dependants. For these reasons, we are in respectful agreement with the view

expressed by the earlier Division Bench case of the Madras High Court. Even assuming that the view expressed by the Full Bench is also a possible view of section 9, we do not think that there is justification for departing from the view taken as early as 1938 when the Legislature did not intervene to overrule that view which had prevailed for nearly forty years. If the view taken in the earlier Madras case or that taken by the Calcutta High Court was not correct, the Legislature would have intervened and made suitable amendments in the Act as was made in the corresponding English Act of 1906 in 1925. As earlier pointed out by us, the Act was amended on 10 occasions between 1937 and 1977 without displacing the interpretation adopted by the Calcutta, earlier Madras and the Andhra Pradesh decisions which is a very strong indication to show that these decisions were in line with the intention of the Legislature. No reference is made to this aspect of the matter by the Full Bench decision of the Madras High Court.

5. Our answers to the questions referred are as follows:

(1) The heir of a deceased dependant can claim the amount deposited as compensation even though the dependant died before he could file a claim before the Commissioner and before compensation could be awarded to him.

(2) The amount of compensation becomes the property of dependants and vests in them even before the Commissioner passes an order of disbursement.

There shall be no order as to costs of this reference.