

Kaveri Structurals Vs. Bhagyam

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Court : Karnataka

Decided On : Oct-14-1976

Reported in : [1978(36)FLR31]; 1976(2)KarLJ394; (1977)IILLJ529Kant

Judge : Honnayya and ;M.N. Venkatachaliah, JJ.

Acts : Workmen's Compensation Act. 1923 - Sections 2, 2(3), 8 and 30

Appeal No. : M.F.A. 372 of 1975

Appellant : Kaveri Structurals

Respondent : Bhagyam

Judgement :

Venkatachaliah, J.

1. This appeal under S. 30 of the Workmen's Compensation Act. 1923, to be hereinafter referred to as the 'Act' is by the employer and is directed against the award of the Commissioner for workmen's Compensation, Kolar Sub-division Robertsonpet, K.G.F. date 19th April, 1975 in Case FC. 19/74 on his file awarding a compensation of Rs. 4,800 in respect of the death of a workmen, George by name, employed by the appellant.

2. It is not disputed that the death, which occurred in an accident of electrocution was in the course of the deceased's employment. His mother Bhagyam preferred

a claim before the Commissioner for workmen's compensation against the present appellant as well as the Bharat Earth Movers Ltd. The latter having questioned its liability in MFA. 360 of 1973, this Court in the said proceedings held that Bharat Earth Movers Ltd. was not liable and the liability, if any, was on the present appellant, pursuant whereunto the Commissioner proceeded to award the said compensation of Rs. 4,800 holding appellant liable.

3. During the pendency of the said proceedings Bhagyam, claimant, died and one Thangaraj, claiming to be her brother, sought to get himself impleaded in the proceedings as her legal representative. The Commissioner has held that the said Thangaraj is entitled to the compensation in the case. This decision is questioned in this appeal.

4. The only point urged by Sri Kasturi, the learned counsel for the appellant, is that a claim under the provisions of the Act could be prosecuted only by an at the instance of a 'dependent' as defined in S. 2(d) of the Act. According to him, the right is a personal right and confined to the 'dependents' enumerated in the section and as the right is a creature of the statute, no person other than those, answering the description of a 'dependent' as defined in S. 2(d) of the Act could prosecute the claim. On this reasoning it is urged that after Bhagyam died, no other 'dependent' within the meaning of that expression having come forward and the said Thangaraj, admittedly, not being a 'dependant' the proceedings abated and the amount in deposit became refundable to the appellant.

5. The question that, therefore, arises in this appeal is whether when a 'dependant' as defined under S. 2(d) of the Act, who preferred a claim, died during the pendency of the proceedings, his or her legal representatives could prosecute the claim for compensation.

6. There is authority for the proposition that were the sole dependant of the deceased died even without having made a claim before the Commissioner, the right of the dependant passed to his or her executor. The legal basis for this position is that the right remained vested in the dependant to the time of his or her death and upon death passed to his or her heirs or legal representatives. See *United Collieries Ltd, v. Simpson*, [1909] A.C. 383.

7. In *Pasupati Dutt v. Kelvin Jute Mills* : AIR1937 Cal495 , a Bench of the Calcutta High Court, consisting of Derbyshire C.J. and B. K. Mukherjea, J., after referring with approval to the said decision in *Unifed Collieries Ltd., v. Simpson* (supra) stated; (per Derbyshire C.J.);

'Here the only person in the class of dependants at the death of the workmen was the applicant's mother. Consequently the right to the compensation money vested in her. It was not competent in my view for the Commissioner to divest her of that right. Therefore, it remained vested in her to the time of her death. Upon her death the right passed to her heirs or legal representatives subject to the conditions of the Succession Act being complied with. In my view 'dependant' in S. 8 includes the heirs or legal representatives of the dependant as defined by S. 2 where the dependant has died since the death of the workman. It is note worthy that in the English Workmen's Compensation Act of 1925, which replaced the Act of 1906, it is provided in S. 2(3) :

Where a dependant dies before a claim under this Act is made, or if a claim has been made, before an agreement or award has been arrived at or made, the legal personal representative of the dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the workman'.

'This was obviously intended to alter the law as laid down in *United. Collieries v. Simpson* (supra). There is no corresponding provision the Indian Act. If the conclusion at which I have arrived is wrong, the position would be that the right to compensation would depend upon the accident of the time when the Commissioner made his inquiry or when the dependant dies. If the commissioner were delayed in making his inquiry through some cause such as a heavy list of some other unavoidable delay, dependants might die uncompensated after suffering privations through the loss of the workman upon whom they were dependant. I cannot think that such is the position under the Act'.

8. We are in respectful agreement with the view taken by their Lordships of the Calcutta High Court in *Pasupati Dutt's case* : AIR1937 Cal495 and adopting the principle laid down therein, held that the Commissioner was right in awarding the

compensation to the Thangaraj, who was held to be the brother and heir of the deceased Bhagyam.

9. In the result, for the reasons stated above, this appeal fails and is dismissed but in the circumstances of the case, without costs.

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