

**Esic Vs. Raj Kali Devi and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/458525](http://sooperkanoon.com/458525)

**Court :** Allahabad

**Decided On :** Oct-18-1994

**Reported in :** I(1995)ACC204; [1995(70)FLR405]; (1996)ILLJ482All

**Judge :** S.R. Singh, J.

**Acts :** Employees State Insurance Act, 1948 - Sections 52

**Appeal No. :** FAFO No. 627/1980

**Appellant :** Esic

**Respondent :** Raj Kali Devi and anr.

**Advocate for Def. :** R.N. Upadhya and ;Amarjeet Singh, Adv.

**Advocate for Pet/Ap. :** B.N. Asthana, Adv.

**Judgement :**

**S.R. Singh, J.**

1. This appeal is directed against the judgment and order dated March 13, 1980 passed by the Employees' Insurance Court, Kanpur in Suit No. 10 of 1977 : Smt. Raj Kali Devi v. Employees' State Insurance Corporation through the Regional Director, Employees, State Insurance Corporation and Anr.

2. The facts giving rise to the suit are not in dispute. Late Sri Hanuman Prasad the son of the respondent-applicant sustained employment injury on July 12, 1976 and died on the spot. The deceased was admittedly an 'insured' person within the meaning of Section 2(14) of the Employees' State Insurance Act, 1948, in short the Act, and the respondent-applicant Smt. Raj Kali devi 'dependent' within the meaning of Section 2(6-A)(i) of the said Act being the widowed mother of the 'insured' person. Her claim for dependents' benefits under Section 52 of the Act read with the 1st Schedule was based on the ground that a divorce had taken place between her son, the 'insured' person, and his wife Smt. Nirmala Devi who remarried two months after the death of the 'insured' and that the respondent-applicant being the widowed- mother was entitled to get the dependents' benefit under Section 52 of the Act.

3. The learned Judge Employees Insurance Court, Kanpur, decreed the claim on the finding that the widow had re-married after the death of the 'insured' person namely Hanuman Prasad and the respondent-applicant being the widowed-mother was entitled for dependents' benefits to the tune of 2/5 of the full rate.

4. Heard Sri. B.N. Asthana for the appellant. None appeared on behalf of the respondent.

5. A conjoint reading of Section 52 of the Act and Item Nos. 8 and 9 of the Table appended to the 1st Schedule would indicate that the dependents' benefit shall be payable to a parent 'in case the deceased person does not leave a widow or legitimate or adopted child'. True, the widowed-mother is bracketed along with the widow under Section 2(6-A)(i) of the Act, which defines the word 'dependent' but items No. 8 and 9 of the Table appended to the 1st Schedule read together indicate that the dependents covered by Item No. 8 would exclude the dependents coming under Item No. 9. In case, however, it is found that a divorce had taken place between the 'insured' person and his wife then it would be deemed that the 'insured' person, at the time of his death, did not leave behind him a widow and it is in that eventuality that the widowed-mother could get the dependents' benefit within the meaning of Section 52 of the Act.

6. The learned Judge, Employees Insurance Court, Kanpur, has not recorded a finding as to whether or not the divorce, as alleged, between Hanuman Prasad and Smt. Nirmala Devi had taken place. Though the evidence was led on the point and it has also been referred to in the judgment but no specific finding was recorded, on the question as to whether or not the divorce, as alleged by the respondent- applicant, had taken place. The only finding, as stated above, is that 'Nirmala Devi has remarried after the death of Hanuman Prasad.' This finding, in my opinion, is not sufficient to confer any right to the widowed mother to claim the dependents' benefit unless it is found that the deceased left no widow and for that purpose a finding is required to the effect that the customary divorce, as alleged, between the 'insured' person and his wife had taken place. In my opinion, therefore, the impugned order as it stands cannot be sustained and the matter has to be sent back to the learned Judge, Employees Insurance Court, Kanpur for deciding the dispute afresh.

7. Accordingly, the appeal succeeds and is allowed. The judgment and order dated March 13, 1980 under appeal is set aside. The matter is remitted back to the learned Judge, Employees Insurance Court, Kanpur with a direction ,to readmit the suit to its number and dispose it of in accordance with law and in the light of the observation made in the body of the judgment after affording opportunity of hearing to the concerned parties. In the facts and circumstances of the case, the parties shall bear their own cost.