

**Sohanbeer Son of Abhay Ram Vs. Workmens Compensation Commissioner/Assistant Labour Commissioner,**

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**SooperKanoon Citation :** [sooperkanoon.com/460404](http://sooperkanoon.com/460404)

**Court :** Allahabad

**Decided On :** Feb-23-2007

**Reported in :** 2007(2)AWC2108; [2007(113)FLR619]

**Judge :** Tarun Agarwala, J.

**Appellant :** Sohanbeer Son of Abhay Ram

**Respondent :** Workmens Compensation Commissioner/Assistant Labour Commissioner, ;smt. Rekha Widow of Balendra D/O

**Disposition :** Petition dismissed

**Judgement :**

**Tarun Agarwala, J.**

1. Heard Sri R.C. Gupta, the learned Counsel for the petitioner and Usha Kiran, the learned Counsel appearing for respondent No. 2.

2. The husband of respondent No. 1 died during the course of his employment. A claim application under the Workmen's Compensation Act was filed by the father, mother, brother and sister of the deceased. During the pendency of the claim application, the widow filed an impleadment application praying that she was a

necessary party and that she was alone entitled to receive the compensation. The impleadment application was allowed.

3. It has also come on record that the widow, respondent No. 2 had also filed a claim application separately under the Workmen's Compensation Act which was dismissed for want of prosecution.

4. The Commissioner Workmen Compensation after considering the evidence on record gave an award dated 2.6.2004 directing the Insurance Company to deposit a sum of Rs. 2,11,790/- along with interest @ 9 % per annum and further directed the parties to move an application under Section 8 of the Workmen's Compensation Act for the apportionment of the aforesaid compensation. Based on the aforesaid award, the Insurance Company has deposited the entire decretal amount. Upon an application filed by the father of the deceased, the Commissioner Workmen Compensation by its order dated 30.11.2004 has released the compensation in favour of the widow, respondent No. 2. The petitioner, being aggrieved by the aforesaid order, has filed the present writ petition.

5. The learned Counsel for the petitioner submitted that he is the father of the deceased and under the law of inheritance, he is entitled for compensation. Further, the petitioner was also dependent upon the income of the deceased, and was therefore, entitled to receive the compensation. It was also contended that the respondent No. 2 remarried after one year from the date of death of the deceased, and therefore, the respondent No. 2 was no longer entitled to receive any compensation.

6. In my opinion, the submission of the learned Counsel for the petitioner is bereft of merit. The Commissioner Workmen Compensation has given a categorical finding that respondent No. 2 being a widow of the deceased was wholly dependent upon her husband, and therefore, was entitled to receive the Compensation under the Workmen's Compensation Act. The Commissioner has also given a finding that the petitioner has independent agricultural income and was not dependent upon his son, namely, the deceased and consequently was not entitled for payment of any compensation. A finding has also been given that the

petitioner was not living with the deceased.

7. Under the Workmen Compensation Act, payment of compensation is payable to a dependent of deceased as contemplated under Section 8 of the Act. A 'dependent' has been defined under Section 2(d) of the Act, which is quoted hereunder:

'dependant' means any of the following relatives of a deceased workman, namely:

(i) a widow, a minor [legitimate or adopted] son, an unmarried [legitimate or adopted] daughter, or a widow 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) a minor illegitimate son, an unmarried illegitimate daughter or a daughter [legitimate or illegitimate or adopted] if married and a minor or if widowed and a minor;

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive  
or

(h) a paternal grandparent if no parent of the workman is alive.]

[Explanation.- For the purposes of Sub-clause (ii) and items (f) and (g) of Sub-clause (iii), reference to a son, daughter or child include an adopted son, daughter or child respectively;]

8. In the present case, a categorical finding has been given that the petitioner was not a dependent either wholly or partly on the earnings of the deceased at the time of his death and that the respondent No. 2 was wholly dependent on the deceased. In view of the provision of the Workmen's Compensation Act, the law of inheritance is not applicable. Payment of Compensation is governed by the provision of the Workmen's Compensation Act. Consequently, the finding of the Commissioner that the respondent No. 2 was entitled for the compensation cannot be disturbed.

9. The learned Counsel for the petitioner further submitted that the respondent No. 2 had remarried, and therefore, she was disentitled from receiving any compensation.

10. In support of his submission, the learned Counsel for the petitioner placed reliance upon a decision in the Oriental Fire and General Insurance Company Limited v. Shrimati Chandrawati and Ors. AIR 1983 All. 174, in which a division bench of this Court held that if a widow remarries, she was not entitled for compensation under the Motor Vehicles Act.

11. The learned Counsel further placed reliance upon a decision in Maharashtra State Road Transport Corporation v. Lalnipuii, JT 2007(1) SC 480, in which the Supreme Court reiterated the aforesaid views.

12. In my view, the aforesaid decision has no application. There is nothing in the Workmen Compensation Act to prohibit a widow from remarrying. There is no prohibition in the Workmen Compensation Act which debars a widow from claiming compensation solely on the ground that she had remarried. The Workmen's Compensation Act clearly provides that a dependent, who was wholly dependent or partly dependent at the time of the death of the deceased was entitled to receive compensation.

13. In Smt. Mankuwarbai, Mandsaur v. Kusum Lata and Anr. 1988 (56) F.L.R.675, it was held that a widow of deceased workman, who had remarried would not be disentitled to receive the compensation. Similar view was held in Veerappan and Anr. v. Muthamma Veerappan and Ors. 1999 (3) LLJ 451.

14. In view of the aforesaid, the award of the Commissioner under the Workmen's Compensation Act apportioning the claim in favour of the respondent No. 2 does not suffer any error of law.

15. The writ petition fails and is dismissed.

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