

Alice and Anr. Vs. Commissioner For Workmen's Compensation and Anr.

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SooperKanoon Citation : sooperkanoon.com/725874

Court : Kerala

Decided On : Aug-14-1986

Reported in : I(1988)ACC446

Judge : V.V. Sivaraman Nair and; K. John Mathew, JJ.

Appellant : Alice and Anr.

Respondent : Commissioner For Workmen's Compensation and Anr.

Judgement :

K. John Mathew, J.

1. Dependants of a deceased person are the appellants. Deceased Thomas was engaged by the 3rd respondent herein who was a contractor executing a work for the 2nd respondent. On 3-1-1976 he died in an accident in the course of his employment. The 1st respondent, who is the Commissioner for Workmen's Compensation, Trivan-drum assessed the compensation payable to his dependants at Rs. 9,720/-. The 2nd respondent deposited that amount for distribution to the dependants. The 1st respondent published a notification calling upon those who claim to be dependants to submit their claims. The appellants submitted their claim to the compensation. However, that was rejected by the 1st respondent and the amount was refunded to the 2nd respondent. The appellants are challenging that order.

2. From the file it is seen that the 1st appellant filed the claim on 27-7-1981. In the said petition it is stated that the mother of deceased Thomas died immediately after delivering him. Thereafter his father married the 1st appellant and she brought up the deceased as her own child. Therefore, she prayed that the compensation may be paid to her.

3. ' The 2nd appellant is the 1st appellant's daughter, through the father of the deceased. Thomas had an elder brother, Thankappan, who is living away from his family. Thankappan's marriage was about 15 years ago. Learned Counsel for the appellants contended that the appellants were depending on Thomas and on his death, they have become 'destitutes'. Under Section 2(1)(d) of the Workmen's Compensation Act the mother and unmarried sister are dependants of the deceased. Deceased had no other dependants coming within that provision.

4. Reference was made to In re: Dependants of Kartar Singh AIR 1931 Lahore 752 and G.M. Gwalior Sugar Co. v. Srilal : (1958)ILLJ89MP , in support of the contention that half sister also-will be included within the meaning of the word 'sister'. Learned Counsel also placed reliance on Ouseph v. State of Kerala 1982 KLT 164, where a half brother was held to be a brother under the Kerala Service Rules. The Lahore High Court has in the above cited decision based its reasoning on the analogy of Section 27 of the Succession Act which makes no distinction in such matters between those who are related to a person deceased by the full blood and those who are related to him by the half blood. The Madhya Pradesh High Court adopted the reasoning of the Lahore High Court and also followed the trend of English law to hold that the words 'minor brother' includes uterine brother, namely, son of the mother of the deceased by another father. We are in respectful agreement with the view of the Lahore High Court.

5. However, whether the word 'mother' will include a stepmother is not easy to decide. There is atleast one ruling, namely, that of the Patna High Court, reported in Dirji v. Goalin AIR 1942 Patna 33, to the effect that the word 'mother' does not include stepmother. However, in A Idl. Dy. Commr., Singbhum v. Laxmibai AIR 1945 Nagpur 238, it was held that the word 'mother' would take in adoptive mother also. In view of the fact that in case the compensation is paid to the 2nd appellant,

who is now under the care of the 1st appellant, the 1st appellant will also be benefited, we do not think it necessary to conclude that a stepmother is not taken in by the word 'mother' in this case. So we are leaving that question open.

6. From the report of the Assistant Labour Officer, Nayyattinkara dated 3-4-1981 (file page 25) it is seen that deceased Thomas was a bachelor and that he was the second son of deceased Jacob in his first wife, Rahel. Jacob and Rahel are no more. In his second wife, Alice (1st appellant) Jacob had two children, namely, Chellappan and Suseela (2nd appellant) the younger brother of deceased Thomas, namely, Bhanu is at Bombay now. Under Section 2(1)(d) of the Workmen's Compensation Act, the brother of the deceased, who is a major, is not his dependant. However, the 2nd appellant who comes within the meaning of the word 'unmarried sister' will be a dependant. Under the circumstances we hold that the 2nd appellant is entitled to the compensation amount due on account of the death of deceased Thomas. Therefore, the appeal is allowed and the respondent Nos. 2 and 3 are directed to pay the compensation amount of Rs. 9,720/- to the 2nd appellant, within two months from this date, failing which she will be entitled to realise the said amount with 9 per cent interest from this date.