

Lucia Vs. Mini and anr.

Lucia Vs. Mini and anr.

SooperKanoon Citation : sooperkanoon.com/732263

Court : Kerala

Decided On : Jan-16-2003

Reported in : I(2004)ACC242; 2003ACJ759

Judge : A. Lekshmikutty, J.

Appeal No. : M.F.A. No. 1327 of 1995

Appellant : Lucia

Respondent : Mini and anr.

Advocate for Pet/Ap. : B. Suresh Kumar, Adv.

Judgement :

A. Lekshmikutty, J.

1. Against the order in W.C.A. No. 3122 of 1995 on the file of the Commissioner for Workmen's Compensation, Kollam, this appeal is preferred by the applicant No. 1. The appellant's son Stephen while employed with Neendakara Port Workmen's Society, a contractor of I.R.E. Ltd., Chavara died on 21.12.1993 on account of the injuries sustained to him during the course of employment. The appellant and her disabled son Xavier filed W.C.C. No. 32 of 1994 before the Commissioner for Workmen's Compensation, Kollam. The respondents are wife and child of late Stephen. The Commissioner found that the appellant and respondent Nos. 1 and 2

are the dependants of late Stephen. Commissioner also found that Neendakara Port Workmen's Society is liable to pay compensation. An amount of Rs. 85,428 was deposited before the Commissioner by the Neendakara Port Workmen's Society towards the award in W.C.C. No. 32 of 1994. The Commissioner apportioned the amount without taking into consideration the dependency of the appellant and others. The appellant was ordered to receive an amount of Rs. 5,000, the respondent No. 1 was allowed to receive an amount of Rs. 60,428 and the respondent No. 2 is allowed to receive Rs. 20,000. As per the appellant, the apportionment was made without any basis and without considering the dependency. Against the said apportionment this appeal is preferred by the appellant.

2. As per the appellant, the court below apportioned the award without entering a finding as to the extent of dependency. The appellant is the mother of deceased Stephen and she has no source of income and due to her old age, she is incapable to earn something. It is further contended that she has to maintain her disabled son Xavier. They were the dependants of deceased Stephen. So, according to the appellant, she is entitled to get one-half of the amount awarded. On going through the impugned order, it can be seen that while apportioning the award, the lower court has not considered the extent of dependency of the appellant and the respondents. The appellant was 58 years old, widow was 24 years and the child was 8 months old. While apportioning the award, the court below ought to have considered the extent of dependency of each heir. As per appellant she is having no source of income. Before apportioning the amount, the court below ought to have given reasonable opportunity to the parties to submit their case in respect of the dependency. Before apportioning the compensation amount the court below ought to have conducted an inquiry about the extent of dependency of each party. Whether the widow has remarried and whether there is any probability of remarriage, etc., were not considered by the lower court. No reasoning is given by the court below in respect of the apportionment and no opportunity was seen given to the parties before passing the impugned order. It is against the natural justice also. In such circumstances, I am constrained to set aside the order passed by the court below and remand the case before the lower court for fresh disposal and the lower court shall pass an order taking into

consideration the extent of dependency of the parties.

The appeal is disposed of as stated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com