

**Savitri Devi and Anr. Vs. Commissioner, Workmen's Compensation and Ors.**

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**Court :** Himachal Pradesh

**Decided On :** Dec-21-2001

**Reported in :** 2003ACJ121

**Judge :** C.K. Thakker, C.J.

**Appeal No. :** C.M.P.M.O. No. 59 of 2001

**Appellant :** Savitri Devi and Anr.

**Respondent :** Commissioner, Workmen's Compensation and Ors.

**Advocate for Def. :** Vivek Thakur, A.A.G. and; Lalit Sharma, Adv.

**Advocate for Pet/Ap. :** Ramakant Sharma, Adv.

**Disposition :** Petition allowed

**Judgement :**

C.K. Thakker, C.J.

1. An important question of law has been raised by the petitioners in this petition as to interpretation of Sub-section (7) of Section 8 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act').

2. The petitioners filed Claim Petition No. 22 of 2000, before the Commissioner, Workmen's Compensation, (SDM), Nalagarh, District Solan. The case of the

petitioners in the claim petition was that one Santosh Kumar, who was working with respondent No. 2 died in an accident arising out of and during the course of employment. The claim petition was allowed and the claimants were awarded compensation in accordance with law vide award dated 26.6.2000. The respondent No. 1 Commissioner awarded Rs. 2,26,380 along with interest at the rate of 12 per cent per annum from the date of the award till the realisation of the amount. It is not in dispute by and between the parties that the award has become final and no appeal or any other proceedings have been initiated either by the employer or by the insurance company.

3. Though, the award is not on record, it appears that the amount was ordered to be invested by the respondent No. 1 Commissioner since both the petitioners-claimants were women, No. 1 being the mother of the deceased Santosh Kumar and No. 2 being widow of the deceased Santosh Kumar.

4. It is the case of the petitioners that they belong to Nepal and are permanent residents of that country. After the death of Santosh Kumar, they had again gone back and permanently shifted to Nepal, their original place of residence. They, therefore, made an application to the respondent No. 1 Commissioner on 2.11.2000 for release of amount of award in their favour. The Commissioner, Workmen's Compensation, vide order dated 1.3.2001, rejected the application keeping in mind the provisions of Sub-section (7) of Section 8 of the Act. It was observed by the learned Commissioner that amount of compensation payable to a woman or a person under-legal disability has to be 'invested' for the benefit of the woman or a person under disability during such disability. Since the payment of compensation was to be made to the petitioners, who were women, keeping in mind the spirit of the provisions of law, the only order which could be passed was of investment of the amount. The application was, therefore, rejected.

5. Again, an application was made by the petitioners on 18.6.2001, stating therein that they have permanently shifted to Nepal, their original place of residence and they were in need of money. It was also stated that the petitioner-applicant No. 1 Savitri Devi, mother of deceased was aged about 45 years and her husband was also an aged person. Both of them were unable to work and earn their livelihood.

Neither petitioner No. 1 nor her husband had movable or immovable property nor there was other source of income and it was difficult for them to make both the ends meet. Her other children were unemployed and two of them were minors. They had to incur expenditure for their maintenance and education. Moreover, she had to get her daughter married which also required money.

6. Regarding petitioner No. 2, it was stated that she was widow of deceased Santosh Kumar and after the death of her husband, it was very difficult for her to survive since she was uneducated, unemployed, simple, domestic and rural rustic lady. There was no other source of income nor she possessed movable or immovable property in her name to fetch any income. A prayer was, therefore, made to release the amount in favour of the petitioners.

7. The respondent No. 1 Commissioner observed in the impugned order that the grounds put forward by the petitioners in their application for release of award money in cash seemed to be 'genuine'. In his view, however, the provisions of Sub-section (7) of Section 8 of the Act could not be overlooked and keeping in mind the spirit behind the said provisions, even the earlier application was rejected on 1.3.2000. He did not see any ground to take a different view and accordingly vide order dated 22.8.2001, second application was also rejected. The said order is challenged by the petitioners under Article 227 of the Constitution.

8. Notice as to admission as well as final hearing was issued to respondent No. 4 only, since respondent Nos. 2 and 3 (owners) had not challenged the decision. Moreover, the amount of award has been deposited by the insurance company.

9. Today, I have heard Mr. Ramakant Sharma, learned Counsel for the petitioners, Mr. Vivek Thakur, learned Asstt. A.G. for respondent No. 1 and Mr. Lalit Sharma, learned Counsel for respondent No. 4.

10. Mr. Sharma, learned Counsel for the petitioners submitted that respondent No. 1 has committed jurisdictional error in not properly interpreting and exercising jurisdiction under Sub-section (7) of Section 8 of the Act. The order, therefore, deserves to be quashed and set aside. He submitted that in appropriate cases, amount can be released in favour of claimants. In the case on hand, award has

become final and has not been challenged by any party. Both the petitioners are permanent residents of Nepal and had gone there. They do not have any other source of livelihood. The Commissioner, in view of all these circumstances, ought to have exercised jurisdiction by granting application particularly when he was satisfied that the grounds put forward by the petitioners were 'genuine'. He, therefore, submitted that the impugned order deserves to be quashed and set aside..

11. Mr. Thakur, learned Asstt. Advocate General for respondent No. 1 stated that looking to the phraseology used in Sub-section (7) of Section 8, it is open to the Commissioner, Workmen's Compensation, in appropriate cases to release the amount. Of course, he will have to consider relevant facts and pass an appropriate order.

12. On behalf of respondent No. 4, Mr. Sharma, learned Counsel submitted that it is in the discretion of the respondent No. 1 Commissioner and if reading the provisions of Sub-section (7) of Section 8 of the Act, an order is passed by him, it cannot be said to be without jurisdiction and this Court in exercise of supervisory jurisdiction may not interfere with such order.

13. Having heard the learned Counsel for the parties, in my opinion, the petition deserves to be allowed. Once an award is made by the Commissioner, Workmen's Compensation under Section 3 of the Act, the next step is of payment of amount to the claimants. Section 8 makes provision regarding payment of compensation.

14. Sub-section (7) which is material for the purpose of controversy raised in the present petition and may be reproduced in extenso:

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of

the workman or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the workman.

(Emphasis supplied)

15. Reading the above provision leaves no room for any doubt that it enables the Commissioner to pass an appropriate order regarding sum deposited with him and payable to (i) a woman; or (ii) a person under legal disability. The legislature has directed the Commissioner to apply his mind and to pass appropriate order as to (a) investment; (b) application; or (iii) otherwise deal with the amount for the benefit of a woman or a person under legal disability. It is thus clear that three alternatives have been suggested by the legislature while dealing with the amount deposited with the Commissioner in cases where a claimant is either a woman or a person under legal disability. The Commissioner may order investment of amount. Likewise, he may apply the amount or otherwise deal with it for the benefit of a woman or a person under disability.

16. The Commissioner, Workmen's Compensation, respondent No. 1, in my opinion, therefore, is not right in observing that the amount of compensation can only be invested in long term deposit. The expressions used in the provisions are 'invested', 'applied' or 'otherwise dealt with'. Moreover, they precede an important expression 'for the benefit of a woman or a person under disability'. In both the orders, the Commissioner, Workmen's Compensation has observed that since the case falls under Sub-section (7) of Section 8 of the Act, he had to pass an order for investment of the amount. He, however, failed to appreciate that he could take an appropriate action under the said provision. One of the modes was of investment of amount. But he could have 'applied' or 'otherwise dealt with' the awarded amount for the benefit of the claimants who were women. In fact, the third is a wider one, which speaks of dealing with the amount otherwise for the benefit of a woman or a person under disability. No doubt, while considering as to investment, application, or otherwise dealing with the amount, the paramount consideration which has to be borne in mind by the Commissioner, Workmen's Compensation, is the benefit of a woman or a person under disability. But since the Commissioner had failed to consider the provision in its proper perspective

and restricted legislative provision interpreting it only to investment of the amount, jurisdictional error can be said to have been committed by him. It can also be said that by interpreting in a limited manner, he failed to exercise jurisdiction by ignoring the remaining two modes or methods suggested by legislature, which has caused serious prejudice to the petitioners and it has resulted in miscarriage of justice.

17. Reading Sub-section (7) of Section 8 as interpreted by the Commissioner, Workmen's Compensation limited to the 'investment' alone, will also make the remaining two alternatives (application) (otherwise dealing with the amount of compensation) nugatory and redundant.

18. When both the petitioners have stated in the application that they are permanent residents of Nepal and that they have permanently settled in that country and the ground seemed to be 'genuine' even by the respondent No. 1, it may not be in the interest of justice, if the amount is ordered to be invested. Considering peculiar facts and circumstances in the light of the fact that the award has become final and has not been challenged either by the owners or by the insurance company, the ends of justice would be met if the amount is ordered to be released in favour of the petitioners-claimants. In my opinion, in such cases if the amount is not released to the claimants, object of the Act and granting of compensation would be frustrated and unless compelled, a court of law would not read a statutory provision, which would frustrate the object of the legislature rather than fulfil it.

19. For the foregoing reasons, in my opinion, the petition deserves to be allowed and is accordingly allowed. The order passed by the Commissioner, Workmen's Compensation on 22.8.2001, is hereby set aside and a direction is issued to release the amount awarded by him in favour of the petitioners as per terms of the award. The amount will be released in favour of the petitioners in their respective bank accounts which will be furnished within a period of four weeks. The petition is accordingly allowed to above extent. In the facts and circumstances of the case, there is no order as to costs.

