

APPELLATE CIVIL.

Before *Derbyshire C. J.* and *Mukherjee J.*

1937

April 23;
May 5.

PASHU PATI DATTA

v.

KELVIN JUTE MILLS.*

Employer and Workman—Compensation, Vesting of—Death of sole dependant before decision by Commissioner—Legal representative, Right to compensation of—Marim actio personalis moritur cum persona—Workmen's Compensation Act (VIII of 1923), ss. 3, 8(1), 8(4).

The employer becomes liable to pay compensation upon the death of the workman, whereupon each member of the class of dependants acquires a right to claim compensation and that right vests in him. Such right may be divested if the Commissioner decides to award the compensation amongst other members of the class but the Commissioner has no right to deprive the whole of the class of dependants of the compensation money.

United Collieries, Limited v. Simpson (1) relied on.

Where the sole dependant dies after the death of the workman but before the enquiry by the Commissioner is completed, her right to the compensation devolves on her heirs or legal representatives.

The doctrine *actio personalis moritur cum persona* does not form part of the law of this country.

Bhupendra Narayan Sinha v. Chandramoni Gupta (2) followed.

APPEAL by the claimant.

The workman, in the case, died leaving as his sole dependant his widowed daughter. Before the case came up before the Commissioner, Workmen's Compensation, the daughter died leaving her minor son, who claimed the compensation payable to his mother. The Commissioner held that since at the date of his decision no dependant within the meaning of s. 8(4) of the Act existed, the money deposited by the employers should be refunded to them. Against this order, the claimant appealed.

*Appeal from Original Order, No. 350 of 1935, against the order of R. H. Parker, Commissioner, Workmen's Compensation, Bengal, in Distribution Case No. 164 of 1934, dated April 25, 1935.

(1) [1909] A. C. 383.

(2) (1926) I. L. R. 53 Cal. 987.

Sarat Chandra Basak, Rajendra Bhooshan Bakshi and *Manmatha Nath Ganguli* for the appellant. The Workmen's Compensation Act in India is similar to the English Act of 1906. Therefore, the right to compensation vests in the dependant and on his death, prior to distribution, passes on to his legal representative. *United Collieries, Limited v. Simpson* (1). The English Act of 1925 cannot apply to this case, as the Indian legislature has not introduced any such disability on the legal representative.

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The liability of the employer arises on the death of the workman and so the right of the dependants must arise at the same time.

In this case, the widowed daughter was the sole dependant under s. 2(d) of the Act and her son is entitled to the vested right of his mother.

The word "exists" in s. 8(4) must mean "exists at the time of the death of the workman."

Nanda Gopal Banerji for the respondents. Under s. 8(4) no particular dependant can be said to have a definite right to any compensation until the Commissioner decides to distribute the fund. The Commissioner may refuse to grant anything to any person, who may be a dependant. This clearly indicates that the right to the compensation does not vest in a dependant until the enquiry of the Commissioner is completed. The word "exists" in s. 8(4) must refer to the time when the Commissioner makes his order.

The case of *United Collieries, Limited v. Simpson* (1) is distinguishable, as under the English Act of 1906 there was no provision for refund. The English Act of 1925 makes the legal position clear.

Cur. adv. vult.

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DERBYSHIRE C. J. The appellant appeals from a decision by the Commissioner, Workmen's Compensation, Bengal, whereby the Commissioner declined to award the appellant any sum of compensation in respect of the death of a workman killed by an accident arising out of and in the course of his employment.

The facts are as follows. On October 5, 1934, one Hari Charan De, the head engine-driver in the Kelvin Jute Mills, was injured at his work. He died on October 13, 1934. The only person who could claim to be dependant upon the deceased within the meaning of the Act was one Kalo Mani Datta. She was the daughter of the deceased, but a widow. She had one son, the appellant, now aged seven years, then aged five years, who lived with her in the house of her father, the deceased workman.

On November 24, 1934, the employers, pursuant to s. 8(1) of the Act, deposited with the Commissioner, Workmen's Compensation, the sum of Rs. 3,500 in respect of their obligations under the Act. On November 29, 1934, Kalo Mani Datta died leaving the appellant surviving her. On April 25, 1935, the Commissioner heard the application of the appellant (through his uncle) for an award to be made in his favour of the compensation, *viz.*, Rs. 3,500. The Commissioner rejected this application on the ground that no dependant within the meaning of the Act then (*i.e.*, on April 25, 1935) existed. Accordingly he ordered the compensation money to be repaid to the employers under s. 8 (4) of the Act.

The relevant provisions of the Act are as follows :—

Under s. 2 (1) (d) a "dependant" includes a widowed daughter "if wholly or in part dependant on the earnings of the workman at the time of his death." (The child of such widowed daughter is not a dependant within the section.)

Section 3 (1) provides that—

If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

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There is a proviso, but neither that nor the rest of the section affects the present case. *Derbyshire C. J.*

Sub-section (2) of s. 3 deals with the case of contraction of occupational diseases. Sub-section (3) gives the Governor-General in Council power to add to the schedule of occupational diseases.

Section 4 (1) provides that “subject to the provisions of this Act the amount of compensation shall be as follows, namely :—

A. Where death results from the injury.....”.

Then follow provisions specifying how the amount of compensation is to be ascertained.

Section 8 (1) provides that—

No payment of compensation in respect of a workman whose injury has resulted in death * * * * * shall be made otherwise than by deposit with the Commissioner * *

Sub-section (4) :—

On the deposit of any money under sub-s. (1) as compensation in respect of a deceased workman the Commissioner shall deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding twenty-five rupees and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied, after any enquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid * * *

Sub-section (5) :—

Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-s. (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

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Sub-section (6) :—

Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

The appellant contends that the right to compensation vested in his mother on the deceased workman's death and that after his mother's death and upon his obtaining a Succession Certificate that right passed to him under the Succession Act and so he is entitled to the compensation money. On the other hand, the employers contend that if no dependant exists at the time when the Commissioner makes the enquiry the money is repayable to them.

A somewhat similar case arose under the English Workmen's Compensation Act (1906), *viz.*, *United Collieries, Limited v. Simpson* (1) where a workman whilst in the employment of a colliery company was knocked down by a wagon in the course of his employment on July 9, 1907. He died of his injuries on July 14th. His mother, alleged to have been dependant upon him, died on October 16, 1907, without making any claim upon the appellants. Her executrix made a claim on December 10, 1907, under the Workmen's Compensation Act, 1906, as representative of the mother. The House of Lords found some difficulty in coming to a decision, but the majority held (Lord Dunedin dissenting) that the right of the dependant of the deceased workman passed to the executor of a sole dependant who had died without having made a claim.

I think the reasoning of Lord Loreburn (p. 389) is applicable here. In discussing the English Act of 1906 he says:—

Paragraph 5 of the schedule requires payment in the case of death "unless otherwise ordered or hereinafter provided" into the county Court to be dealt with in discretion "for the benefit of the persons entitled thereto under this Act." This is, no doubt, in order to relieve the employer and ensure a proper

(1) [1909] A. C. 333, 389-90.

custody, distribution, and application of the money, especially where there are minors or several dependants, or where there are persons for whom the county Court judge thinks it advisable to take precautions.

The eighth paragraph also contemplates payment to a dependant. And though the ninth reserves a power to vary the apportionment, neither it nor any other paragraph proceeds upon any other view than that there is a definite right on the part of dependants as a class to the money, subject to a parental power of the Court in dividing and applying it for their advantage.

If there is this right, when does it arise or become vested? The statute evidently treats it as arising because of the workman's death. It seems to follow that it arises on the workman's death, unless some other event is fixed.

At page 390 he remarks:—

I observed that in Lord M'Laren's opinion if the claim is made within the statutory period, and the dependant dies before an award has been made, the right to an award of compensation has vested in the dependant, and a right to follow out the proceedings in the arbitration passes to the legal personal representatives. But if the claim has not been made, his Lordship thinks that the employer's liability is terminated by the death of the dependant. That opinion is entitled to the greatest respect, but I cannot agree. I cannot see why the claim instead of the death is to be regarded as the signal for the right to compensation vesting. And even if it were so, the Act does not require that the dependant himself should make the claim, and I do not see why that right to make the claim should not pass to the executor.

It seems to me, therefore, that, as the person represented by the respondent was the only dependant, her representatives may properly claim all that she was entitled to, the right being transmissible as property.

Applying a similar process of examination and reasoning to the Indian Act, my own view is that ss. 3 and 4 make the employers liable to pay compensation upon the death of the workman and fix the amount which has to be paid. Section 8(5) gives a right to the dependants of the deceased workman as a class, but not individually, to that compensation money. The Commissioner may apportion the compensation money amongst such members of the class as he thinks proper, even to the extent of allotting the money to one dependant only. It does not give the Commissioner the right to deprive the whole of the class of dependants of the compensation money. In my view, therefore, upon the death of the workman, each member of the class acquires a right to claim compensation and that right vests in him. That dependant may thereafter be divested of that right or find it of no value because the Commissioner decides to award the compensation amongst other members of the class.

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Here the only person in the class of dependants at the death of the workman was the applicant's mother. Consequently, the right to the compensation money vested in her. It was not competent, in my view, for the Commissioner to divest her of that right. Therefore it remained vested in her to the time of her death. Upon her death, the right passed to her heirs or legal representatives subject to the conditions of the Succession Act being complied with.

In my view "dependant" in s. 8 includes the heirs or legal representatives of the dependant as defined by s. 2 where the dependant has died since the death of the workman.

It is noteworthy that in the English Workmen's Compensation Act of 1925, which replaced the Act of 1906, it is provided in s. 2 (3) :—

Where a dependant dies before a claim under this Act is made, or if a claim has been made, before an agreement or award has been arrived at or made, the legal personal representative of the dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the workman.

This was obviously intended to alter the law as laid down in *United Collieries, Limited v. Simpson* (1). There is no corresponding provision in the Indian Act.

If the conclusion at which I have arrived is wrong the position would be that the right to compensation would depend upon the accident of the time when the Commissioner made his inquiry or when the dependant die. If the Commissioner were delayed in making his inquiry through some cause such as a heavy list or some other unavoidable delay, dependants might die uncompensated after suffering privations through the loss of the workman upon whom they were dependant. I cannot think that such is the position under the Act.

I am of the opinion, therefore, that the Commissioner was wrong in law in the award he made, and that before ordering the return of the compensation money to the employers he should have satisfied

(1) [1909] A. C. 333.

himself that no dependant within s. 2, or heir or legal representative of such dependant, who has died since the death of the workman, existed at the date of the inquiry.

The matter will go back to the Commissioner for him to deal with it upon the lines indicated above.

The appellants will have the costs of this appeal here, but the cost of the first hearing will be left to abide the result of the further hearing by the Commissioner. The hearing fee, in this Court, is assessed at five gold mohurs.

MUKHERJEA J. I agree with my Lord the Chief Justice in the judgment that has just now been delivered, and I would desire only to add a few words.

The point in controversy in this appeal is, as to whether, on the death of a workman through some accident arising in course of his employment, a right to the compensation, payable by the employer under the Workmen's Compensation Act, does vest in his dependant or dependants actually existing at the time of his death; and if such dependant dies before any claim to such compensation is made or investigated, does the right pass on to his heirs or legal representatives?

The second part of the question does not really present any difficulty. The doctrine "*Actio personalis moritur cum persona*" does not form part of the law of this country: see *Bhupendra Narayan Sinha v. Chandramoni Gupta* (1). Section 306 of the Indian Succession Act embodies the statutory provision as regards devolution of rights and liabilities of the deceased upon his legal representatives. The right to demand compensation payable under a statute is certainly not founded on tort, and does not come within any of the exceptions that are mentioned in s. 306, Succession Act. It is really not disputed on behalf of the respondent that if the right accrued in favour of the appellants' mother during her

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lifetime it would devolve on her legal representatives at her death. What is disputed is that any right could accrue in favour of a defendant at all till the enquiry is finished by the Commissioner and the distribution order made. The answer to this question has got to be found in the relevant sections of the Workmen's Compensation Act, relating to payment and distribution of the compensation.

Section 3 of the Act lays down that:—

if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

Section 4 lays down the rules for determination of the amount of compensation, s. 8(1) then says, where the injury has resulted in death, no payment of compensation shall be made otherwise than by deposit with the Commissioner. Under cl. (4) of that section, the Commissioner after he receives the deposit has got to give notice on each dependant, and if he is satisfied on enquiry that no dependant exists he has to refund the money to the employer. In case dependants exist, the money may be distributed amongst them in such manner as the Commissioner thinks proper, and may in his discretion be allotted to one dependant only to the exclusion of the rest. Mr. Banerji on behalf of the respondent contends that these provisions make it perfectly clear that the dependant or dependants do not acquire any right in the compensation till the order is passed by the Commissioner after enquiry under cl. (5) of s. 8, and if there is no dependant actually living at the time when the award is made, there is no other course open to the Commissioner but to refund the money to the employer. This contention, in my opinion, is not tenable. It is true that s. 3, which imposes the liability upon the employer to pay compensation, does not specify the person or persons to whom it is payable, but s. 8 makes it clear that nobody has any right to it except the dependants, and this is the case, whether the compensation is paid direct or through the Commissioner.

In certain cases the compensation has to be deposited with the Commissioner, and this is for ensuring its safe custody and equitable distribution, particularly when there are more dependants than one, but, though the Commissioner has got the entire discretion in the matter and can allot the entire amount to one dependant, he cannot deprive the sole dependant of any portion of the compensation, nor can give any portion of the same to one who is not a dependant.

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The right therefore accrues to the dependants as a class, subject to the Commissioner's rights of distribution in such way as he thinks proper, and in case of a sole dependant it vests absolutely and it is a right which has been given to the dependants because of the workman's death, it must be deemed to accrue at the time of his death, there being no grounds of postponing it to a further date. A duty to refund the compensation arises only when there is no dependant "in existence" and this must mean "in existence" at the time of the workman's death. To put any other interpretation would be to frustrate the object of the Act, and place the right to compensation on an uncertain contingency. The enquiry before the Commissioner may be delayed for various reasons, and people who really depended upon the earnings of the deceased workman might die before or pending the enquiry and even just before the Commissioner makes the award. To say that the Commissioner is bound to refund the money to the employer under such circumstances would be to put an extremely narrow and unjust construction upon the section, which is not borne out by the purpose of the Act or the actual words used. As my Lord the Chief Justice pointed out in his judgment, the House of Lords in England took a similar view in *United Collieries, Limited v. Simpson* (1) upon the provisions of English Workmen's Compensation Act of 1906. The English Act also provided for payment of the compensation into the county Court, which could deal with it in its discretion, and

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divide it in such manner as it thought best among the dependants of the deceased workman. It is true that there was no provision for refund of the money to the employer in the English Act of 1906, but that is really not very important as on total absence of any dependant the money could not really be retained by the county Court and would have to be returned to the employer in exercise of its inherent powers. Mr. Banerji for the respondent lays stress on the fact, that in the English Act of 1925, an express provision was inserted in s. 2, cl. (3), under which the legal representative of a dependant had no right to the compensation payable to the latter; but here again it is significant to note that the Indian Act was amended on various occasions even after 1925, but the Indian legislature did not think it proper to introduce any provision like the one mentioned above. It may be said indeed that to hold that the dependants' right to compensation is a vested right which passes to his legal representative would be to put an additional burden upon the employer, the effect of which might be to enrich strangers and persons totally outside the scope of the Act, but the result would be exactly the same if the dependant dies the very day after receiving the compensation. For all these reasons, I agree that the appeal should be allowed, and the case remanded to the Commissioner for investigation, as to whether the appellants' mother was really a dependant within the meaning of s. 2 (d) (ii) of the Workmen's Compensation Act. Of course the question as to whether the appellant is the legal representative of the deceased dependant cannot be gone into before the Commissioner. It must be established by letters of administration or such other proof as the law provides for establishing such rights.

Appeal allowed: case remanded.

S.M.