HIGH COURT OF JUDICATURE FOR RAJASTHAN

SASTHAN HIGH CO

AT JODHPUR

S.B. Civil Misc. Appeal No. 974/2015

National Insurance Co. Ltd. Through Divisional Branch Manager, 6 Bapu Bazar, Udaipur through Regional Manager, National Insurance Co. Ltd., Pal Road, Jodhpur

----Appellant

Versus

- 1. LR's of Dhapu Kanwar W/o late Tej Singh,
- 1/1. Himmat Singh S/o late Tej Singh, aged 29 years,
- 1/2. Pratap Singh S/o late Tej Singh, aged 27 years, R/o Dhana, Tehsil Mavli, District Udaipur.
- 2. Surendra Singh S/o Rod Singh, Resident of Boyana, Tehsil Mavli, District Udaipur.
- 3. Lad Kunwar W/o Basanti Lal Badala, Resident of 38, Arvind Nagar, Sunderwas Udaipur.

----Respondents

Connected With

S.B. Cross Objection (Civil) No. 4/2016

Lad Kunwar W/o Basanti Lal Badala, Resident of 38, Arvind Nagar, Sunderwas Udaipur.

----Appellant

Versus

- National Insurance Co. Ltd. Through Divisional Branch Manager, 6 Bapu Bazar, Udaipur through Regional Manager, National Insurance Co. Ltd., Pal Road, Jodhpur
- 2. LR's of Dhapu Kanwar W/o late Shri Tej Singh,
- 2/1. Himmat Singh S/o late Shri Tej Singh, aged 29 years,
- 2/2. Pratap Singh S/o late Shri Tej Singh, aged 27 years,
- 3. Surendra Singh S/o Rod Singh, R/o Boyana, Tehsil mavli, District Udaipur.

----Respondents

For Appellant(s)	:	Mr. Anil Kaushik.
For Respondent(s)	:	Mr. R.S. Mankad Mr. G.S. Rathore on behalf of Mr. Deelip Kawadia.



HON'BLE DR. JUSTICE NUPUR BHATI

Judgment

REPORTABLE Reserved on: 12/08/2024

Pronounced on: 28/08/2024

Introduction:

1. The misc. appeal - S.B. C.M.A. No. 974/2015 (hereinafter referred to as 'the appeal') has been preferred by the appellant-Insurance company under Section 30 of the Employees Compensation Act, 1923 against the judgment and award dated 11.03.2015 (hereinafter referred to as 'impugned award') passed by Employees Compensation Commissioner, Udaipur in Claim Case No. 22/2011 seeking relief that the impugned award be kindly quashed and set aside. The respondent no. 3/employer in the appeal, who is the owner of Tanker bearing registration No. RJ27 GA 5631, has also filed a misc. Cross Objection under Order 41 Rule 22 of CPC, 1908 in the appeal against the impugned award be quashed and set aside qua the cross objector.

Facts:

2. The facts germane to the present appeal and cross objection are that one Lehar Singh (hereinafter 'deceased') was employed 3/employer (hereinafter by respondent no. 'Cross Objector/employer') as cleaner on her tanker bearing registration no. RJ27 GA 5631(hereinafter 'tanker'), which was registered and insured in the name of Lad Kanwar ('Cross Objector/employer'). During the course of employment the



deceased was coming from Kandla to Sumerpur in the tanker in the capacity of cleaner (Khallasi) when on 21.10.2008 at around 04:00 AM near Sadbhavana Camp, Babara Patiya the Respondent No. 2 (driver of the tanker) while driving the tanker rashly and negligently dashed in the rear portion of a trailer bearing registration no. RJ32 GA 2695(hereinafter 'trailer'), which was standing there. As a result of the accident the deceased died on the spot. The FIR No. 79/2008 was lodged before Police Station Sankalpur, District Radhanpur on 21.10.2008 by the respondent no. 2/driver.

Thereafter, a registered legal notice (Annex 1) dated 3. 08.07.2010 was sent by brothers of the deceased namely- Mr. Himmat Singh- Claimant/Respondent no. 1/1 and Mr. Pratap Singh-claimant/ Respondent no. 1/2 to the Cross Objector/employer wherein it was stated that the deceased was employed as cleaner by the Cross Objector/employer. Further, it was stated in the said legal notice that the Cross Objector/employer has failed to deposit a compensation of Rs. 4,45,420/- within the stipulated time of one month as required under the Workmen Compensation Act, 1923, therefore the Cross Objector/employer is liable to penalty of 50% of the compensation i.e., Rs. 2,22,710/- along with the amount of compensation. Further, it was stated by the claimants (Respondent no. 1/1 and Respondent no. 1/2) in the said legal notice that if the employer fails to deposit said amount of the compensation and penalty within 7 days from the date of receipt of the legal notice then

appropriate proceedings will be initiated against the employer before the court.

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4. The Cross Objector/employer in her reply (Annex. 2) dated 02.08.2010 to the legal notice dated 08.07.2010 stated that the claimants (Respondent no. 1/1 and Respondent no. 1/2) being major brothers of the deceased cannot be termed as dependant and hence are not entitled to compensation however, as the tanker was insured with the appellant-insurance company at the time of the accident the claimants (Respondent no. 1/1 and Respondent no. 1/1 and Respondent no. 1/2) are free to initiate legal proceedings against the insurance company.

5. As the compensation was not deposited a claim petition (Annex. 3) under section 10 and 22 was filed by the claimants before the Workmen Compensation Commissioner, Udaipur (hereinafter 'Commissioner') on 10.08.2010 seeking compensation and penalty of 50% of compensation amount. The commissioner recorded in the claim petition that the claimant no. 1/Mother of the deceased workmen died on 01.11.2008, and in respect of this fact death certificate-exhibit-8 was filed by her legal heirs, and Himmat Singh (respondent no. 1/1) has also filed a certificate in respect of his disability on the basis of which he claimed that as legal heir he falls under the category of dependant.

6. The notices of claim petition were served to all the nonclaimants (appellant-insurance company as well as to Respondent no. 2/driver and the Cross Objector/employer) to give them opportunity of being heard. Subsequent to the serving of notice, power was filed power on behalf of Respondent no. 2/Driver and



the Cross Objector/employer before the commissioner. Thereafter, as nobody appeared on behalf of Respondent no. 2/Driver and the Cross Objector/employer, *ex parte* proceedings were initiated against them *vide* order dated 09.04.2012.

7. It was alleged in the claim petition by the claimants that the compensation amount has not been deposited by the nonclaimants even after several requests in this behalf, therefore, the latter are liable to pay compensation as well as penalty of 50% of the compensation amount to the claimants.

8. On the other hand, it was alleged by the appellant-insurance company that both the claimants are major brothers and don't fall into the definition of legal heirs. Further, it was alleged by the appellant-insurance company that both the major brothers were not dependent on the deceased and also do not fall under the definition of 'dependant'. Further, it was alleged by the appellant-insurance company before the commissioner that the claimants have not sent any legal notice to the insurance company for seeking compensation. It was further alleged by the insurance company before the commissioner that as the employer/Cross Objector has not submitted a claim form to the insurance company, as required by the insurance policy, thus, the employer breached the fundamental condition of insurance policy and hence, insurance company is not liable.

9. On the basis of the pleadings of the parties, the commissioner framed five issues, which are being reproduced below:

"1. क्या मृतक श्री लहरसिंह राजपुत अप्रार्थी संख्या-2 के नियोजन व निर्देशन में बतोर खलासी का कार्य करने के दौरान घटित दुर्घटना में दिनांक-21.10.2008 को मृत्यू कारित हुई ?

 आया वक्त दुर्घटना मृतक की उम्र-30 वर्ष व वेतन रु.4,000/- प्रतिमाह था?

3. क्या बीमा पॉलिसी की शर्तों का उल्लंघन हुआ है और बीमा कम्पनी के क्षतिपूर्ति व व्याज अदायगी के उत्तरदायित्व पर इसका क्या प्रभाव होगा?

4. क्या वक्त दुर्घटना नियमानुसार केवल प्रार्थीगण ही मृतक के आश्रित थे?

5. अनुतोष ।"

10. Thereafter, on behalf of the claimants total 13 documentary evidences were submitted and also claimant/respondent no. 1/2 filed an affidavit in evidence.

11. The findings of the commissioner in respect to the issues framed are as follows:

Issue-1: Deceased workmen died during the course of employment (in favour of claimants).

Issue-2: Age 30 years and monthly income Rs. 4000/- (as per Explaination-II of Sec. 4(1) (a) of EC Act). (in favour of claimants).

Issue-3: No violation of policy conditions hence, Insurance Company liable to pay compensation as per section 3 of the Workmen Compensation Act, 1923. (against insurance co.)

Issue-4: Himmat Singh (respondent no. 1/1 herein) comes under the definition of dependant u/s 4(d)(i) being legal heir to deceased dependant as he is deaf and dumb and has also submitted a certificate of disability(Exhibit 9A) in this behalf and was dependent on the deceased workmen. (in favour of Himmat Singh)

Issue-5: The Insurance company and employer are jointly and severally liable to pay Rs. 4,15,960/- as compensation to the



claimant. And the Cross Objector/employer was directed to pay Rs. 1,66,384/- as penalty to the claimants.

12. Thus, after perusing the material available on record, the commissioner decided the claim petition in favour of the claimants *vide* judgment and award dated 11.03.2015, whereby an award of Rs. 4,15,960/- has been passed in favour of the claimants along with 12% interest from the one month after the date of accident till realization and held appellant-insurance company as well as respondent no. 3/employer jointly and severally liable to pay the compensation amount. Also, the the Cross Objector/employer was directed under Section 4A(3)(b) of the Workmen Compensation Act, 1923 to make payment of 40% of compensation amount i.e., Rs. 1,66,384/- as penalty to the claimants.

13. Hence, the instant misc. appeal and the misc. cross objection.

Submissions by the Appellant/Insurance Company:

14. It is submitted by the learned counsel on behalf of the appellant-insurance company that the claim petition was filed by the major brothers of the deceased workmen however they don't fall under the definition of 'dependant' under Section 2(1)(d) of the Workmen Compensation Act, 1923.

15. Further, it is submitted by the learned counsel on behalf of the appellant-insurance company that the commissioner has overlooked the fact that the mother of the deceased workman, who was the sole dependant, died even before the claim petition was filed and also the fact that the legal notice dated 08.07.2010 was sent by respondent no.1/1 and 1/2 (major brothers) to the



employer/respondent no. 3 after the death of their mother. He further submits that no application to amend the cause title was filed by the respondent no. 1/1 and 1/2 before the commissioner, however, the commissioner while proceeding with the case by his own has shown both the respondent no. 1/1 and 1/2 (major brothers) as legal heirs of the mother of the deceased in the cause title of the impugned order.

16. Further, it is submitted by the learned counsel on behalf of the appellant-insurance company that no action was initiated by the mother of the deceased workman during the period she was alive. He further submits that after the death of the mother of deceased workman on 01.11.2008, the claim as regard to the compensation stood abated. He also submits that as the claim petition was not filed by the deceased mother of the deceased workman, the claim has abated and no cause of action survives and also as the claimants (respondent no.1/1 and 1/2) were not dependent, the judgment and award passed by the commissioner is without jurisdiction and deserves to be quashed and set aside.

17. The learned counsel placed reliance on the Judgment of Hon'ble Madras High Court in *B.M. Habeebullah Maricar vs. Periaswami and Ors.,* [1977 LAB IC 1676].

Submissions by Respondent No. 1/1 and 1/2(Claimants):

18. *Per contra*, it is submitted by the learned counsel on behalf of the claimants/respondent no. 1/1 and 1/2 that the dependency has to be seen from the date of the accident as under the scheme of the Workmen Compensation Act, 1923 the right to claim compensation accrues on the date of death of the deceased

workmen. He further submits that as on the date of death of the workmen the mother was alive, and the claimants/respondent no. 1/1 and 1/2 being the legal heirs of the deceased dependantmother of the deceased workmen are entitled for the compensation. The counsel for the claimants/respondent no. 1/1 and 1/2 has placed reliance on the following judgments: Gopal Synthetics vs. Workmen's Compensation Commissioner and Ors. [1994(1) RLW 476], In the matter of Reference under Section 27 of the Workmen's Compensation Act, regarding Madho Singh, [1980 MPLJ 261], Pratap Narain Singh Deo vs. Srinivas Sabata and Ors., [AIR 1976 SC 222], Oriental Insurance Co. Ltd. vs. Siby George and Ors, [2012(2) ACTC 851(SC)], New India Assurance Co. Ltd. vs. Smt. Savita, [2004 ACJ 2134] and Kerala State Electricity Board and Ors. vs. Valsala K and Ors. [AIR 1990 SC 3502].

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Submissions by Cross Objector/Employer:

19. On the other hand, it is submitted by the learned counsel on behalf of the cross objector/employer that as the tanker bearing registration no. RJ27 GA 5631 was insured with the appellantinsurance company on the date of the accident and also as the insurance company has been held liable by the commissioner to pay the compensation while deciding issue no.3, there was no occasion for the commissioner to fasten liability upon the cross objector.

20. Further, it is submitted by the learned counsel on behalf of the cross objector/employer that it is not on the record that the cross objector was ever approached by the claimants for



compensation and also no delay has been attributed on the part of the cross objector. Therefore, the cross objector is not liable to pay penalty amount as per the provisions of the Workmen Compensation Act, 1923.

21. The learned counsel on behalf of the cross objector has placed reliance on the following judgment: *Vinit Nagpal vs. Rasheed Khan & Ors., [RAR 2014 R 236]* and *Ramesh Chand vs. Santosh Kumar & Anr., [RAR 2014 R 396]*.

Substantial Questions of Law as suggested by the Appellant:

22. Heard the counsels appearing on behalf of the parties and perused the material available on record. The substantial questions of law as suggested by the appellant are as follows:

Question No.1.: Whether major brothers fall within the definition of dependent as given in the Employees Compensation Act, 1923?

Question No.2.: Whether commissioner can change the cause title without there being any application to the same filed by the parties?

Question No.3.: Whether on the death of the dependant prior to filing the claim cause of action survives or not?

Observations:

23. Heard the learned counsels appearing on behalf of the parties.

Discussion and Answer to Question No. 1:

24. The first question to be adjudicated by this court is whether major brothers fall within the definition of 'dependant' under Section 2(1)(d) of the Employees Compensation Act, 1923. The



term 'dependant' is defined under Section 2(1)(d) of the Act, which is as follows:

"Section 2(1)(d):

(d) "dependant" means any of the following relatives of a deceased employee, namely:—

(i) a widow, a minor legitimate or adopted son, and unmarried legitimate or adopted daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the employee 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 dependent on the earnings of the 9[employee] 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 a 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 2[employee] is alive.]

Explanation.—For the purpose of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively;"

25. It is clear from the bare perusal of section 2(1)(d) of the Act

that major brothers do no fall within the definition of 'dependant'

as they are excluded and only minor brother is said to be dependant. Thus, the first question raised in the appeal is answered in the negative.



Discussion and Answer to Question No. 2:

26. The second question as suggested in the appeal is whether commissioner can change the cause title without there being any application to the same filed by the parties?

27. This court is of the view that this question itself is misconceived and baseless as from the perusal of the material available on the record, it is evident that the said Legal Representatives of the deceased dependant were mentioned in the cause title by the commissioner as corrections are visible on the claim petition available on record which were apparently made by the claimants/respondent no. 1/1 and 1/2 in the cause title on 13.08.2010 and thereafter the claim petition was presented before the commissioner. Thus, on account of amendment made by the claimants/respondent no. 1/1 and 1/2 in the cause title, there was no requirement of filing any application by the claimants/respondent no. 1/1 and 1/2, and the submission of the learned counsel on behalf of appellant that the commissioner himself has made the amendment in the title of the claim passing the judgment and award dated 11.03.2015 is misconceived and is already answered in the negative.

Discussion and Answer to Question No. 3:

28. The third question as suggested in the appeal is whether on the death of the dependant prior to the filing of the claim, cause of action survives or not?



29. Before adverting to answer this question, this court finds it

germane to consider the position of law with respect to the said

question.

30. The relevant sections of the Act are being reproduced as follows:

"Section 3. Employer's liability for Compensation.—(1) If personal injury is caused to an employee 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:

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to—

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employee's, or

Section 4:

"Section 4. Amount of Compensation.—(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:—

....″

Section 4A:

"4A. Compensation to be paid when due and penalty for default.—(1) <u>Compensation under section 4 shall be</u> paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—



(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher, rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty: Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.—For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

(3A) The interest and the penalty payable under subsection (3) shall be paid to the employee or his dependant, as the case may be."

Section 8:

"8. Distribution of Compensation.—1 (1) No payment of compensation in respect of an employee whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased employee, an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such employee and so much of such amount as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased employee the Commissioner 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 inquiry 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. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(5) Compensation deposited in respect of a deceased employee shall, subject to any deduction made under subsection (4), be apportioned among the dependants of the deceased employee 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.

(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.

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

(8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him. (9) Where the Commissioner varies any order under subsection (8) by reason of the fact that payment of

compensation to any person has been obtained by fraud,



impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31."

"9. Compensation not to be assigned, attached or charged.—Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the employee by operation of law, nor shall any- claim be set off against the same."

31. Thus, it is evident from the above-mentioned provisions that Section 3 of the Act states about employer's liability for compensation in accordance with the provisions of the Act if personal injury or death is caused to a workman/employee by accident arising out of and in the course of employment. Section 4 of the Act states about the amount of compensation that is payable. Further, Section 4A (1) of the Act stipulates that the compensation under Section 4 shall be paid as soon as it falls due. Further, Section 4A (3) of the Act provides that if the employer fails to deposit the compensation due under this Act within the prescribed period, the Commissioner shall subject to the proviso contained therein impose a penalty. Section 8(1) of the Act provides the manner in which compensation in respect of a workman/employee whose injury has resulted in death is to be deposited with the Commissioner and the proviso attached thereto provides that an advance payment on account of compensation may be made by the employer to any dependant of the deceased workman/employee in the manner as specified therein. And Section 8 (5) of the Act provides that subject to Section 8(4) of the Act the compensation deposited with the commissioner shall be apportioned among the dependants of a deceased workman/employee.

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Before adverting to construe the provisions of a beneficial 32. legislation like the Employees Compensation Act, 1923, the object for which it was enacted has to be kept in mind. It is evident that the Employees Compensation Act, 1923 was enacted in India with the primary objective of providing financial compensation to workmen/employees who suffer injury or death during the course of their employment. The Act is a significant piece of legislation aimed at protecting the rights and advancing the welfare of workmen/employees ensuring that their dependants are compensated for the loss of income resulting from workplace accidents. The key objects and reasons are protection of workmen their families, accountability of employers, equitable and compensation and judicial and administrative mechanism. Thus, the provisions of the Act are beneficial for the workmen and their families and therefore, have to be interpreted in the manner so as to advance the object with which it was enacted rather than putting any obstruction in the implementation.

33. It is clear from the bare perusal of Section 4A (1) of the Act that the compensation under Section 4 of the Act shall be paid as soon as it falls due. Now, it is important to understand the meaning of the expression 'as soon as it falls due' as used in Section 4A of the Act for understanding when the compensation under Section 4 of the Act falls due or becomes payable. The conjoint reading of Section 4A(1) and Section 8(1) and Section 4 of

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the Act falls due immediately on the date of the death of such workman and thus, becomes payable to any one dependant of such deceased workman. Thus, a right to receive compensation crystallizes in favour of any one dependant of the deceased workman immediately on the death of such workman. Therefore, the relevant date for ascertaining whether right to receive compensation accrued in favour of a dependant is the date of workman's death and not the date when claim petition is filed.

34. Further, it is true that Section 3 of the Act imposes liability upon the employer to pay compensation, however, it does not specify the person to whom it is payable. It is also seen that Section 8 of the Act clearly provides that nobody has right to receive the compensation except the dependants. However, the word 'dependant' in Section 8(4) of the Act - to whom distribution of compensation can be made by the commissioner is of wider import so as to include the Legal Representatives of the dependant if the 'dependant' dies after the accrual of a right to receive compensation on account of the death of the workman in his/her favour. Thus, on the death of the workman through an accident during the course of his employment a right to the compensation payable by the employer under the Act vests in his dependant (i.e., the mother in the present case) actually existing at the time of his death and upon his/her death, even before the claim petition could be filed, the right passes on to her legal representatives and would continue through his/her legal representatives. Therefore, in such cases the legal representatives of the deceased dependant are entitled to receive compensation to



the exclusion of the heir of the deceased workman. This view also finds force from the fact that there is no provision in the Act which states that the dependant should be alive at the time of filing of the claim petition. And thus, the cause of action to receive the compensation survives even prior to the filing of the claim petiton where the deceased dependant was alive at the time of the death of the deceased workman.

35. Further, Section 9 of the Act restricts assignment or passing of the compensation payable under the Act to any person other than the workman or dependant by operation of law. However, keeping in mind the object of the beneficial legislation, the expression 'by operation of law' as contained in Section 9 cannot be interpreted so as to restrict the assignment of such right to receive compensation to the legal representatives of the deceased dependant. The Workmen Compensation Act, 1923 being a beneficial legislation has been enacted for the purpose of social welfare of the workman who dies or suffers an injury during the course of employment and therefore, should be construed to give effect to the object for which it was enacted.

36. This Court finds that the Hon'ble Madhya Pradesh High Court in *In the matter of Reference under section 27 of the Workmen's Compensation Act, Regarding Madho Singh,* **1979 SCC OnLine MP 144,** while dealing with a similar substantial question of law and while answering the same discussed earlier judgments of The Hon'ble Calcutta High Court *Pasupati Dutt v. Kelvin Jute Mills* [AIR 1937 Cal. 495.], the judgment of Hon'ble Andhra Pradesh High Court in *Radhakrishna*



Rice Mill v. *Applelacharvulu* [(1958) 1 An WR 316.], the judgment of Hon'ble Madras High Court in *Abdurahiman* v. *Beeran Koya* [AIR 1938 Mad. 402.]. And while disagreeing with the views expressed by the full bench of the Hon'ble Madras High Court the *B.N. Habeebullah Maricar* [1977 - II L.L.N. 370] gave following pertinent observations:

"3.The question whether compensation can be claimed by heirs of the dependant of a deceased workman who was not paid the compensation before his death was also considered by the Andhra Pradesh High Court in Radhakrishna Rice Mill v. Applelacharvulu [(1958) 1 An WR 316.]. The Andhra Pradesh High Court followed the Calcutta and Madras decisions referred to above. The cases mentioned above had established the law that the right to compensation vests in a dependant and passes on to his heirs in case of the dependant's death before receipt of compensation. If he is also noteworthy that before 1976 the Act was amended on 10 occasions after 1937, yet no amendment was made to displace the law established as above by judicial decisions which impliedly shows that the decisions had correctly interpreted the Act.

4. A Full Bench of the Madras High Court, however, in B.M. Habeebullah v. Periaswami [AIR 1977 Mad. 330.] overruled its earlier decision in Abdurahman's case. It was held in this case that Abdurahiman's case had not correctly interpreted section 9 of the Act in the light of the definition of workman and the correct interpretation is that there is no passage of right of compensation from a dependant to his heirs if the dependant dies before receipt of the compensation under section 8. With great respect, we are unable to agree with the view taken by the Full Bench of the Madras High Court. The relevant portion of section 9 of the Act reads as follows:

"No lump sum or half monthly payment payable under this Act shall pass to any person other than the workman by operation of law."

Reading the word "workman" in the light of the definition given in section 2(1)(n) the above quoted portion of section 9 will read as under:

"No lump sum or half monthly payment payable under this Act shall pass to any person other than the workman and where the workman is dead, his dependants, by operation of law."

Now the section quoted as above deals with prohibition of passing of compensation by operation of law. Ordinarily



devolution by succession is also a mode of passing of property by operation of law, but in such a case there can be no question of passing of any property to the deceased. Had the intention under section 9 been to prohibit passing of property by devolution, the words "other than the workman" would not have been there. The section would have been simply worded as below:

"Save as provided by this Act, no lump sum or half monthly payment payable under this Act shall——pass to any person by operation of law."

The words "other than the workman" signify that the workman or his dependant is in existence when the question of passing of property by operation of law arises. In our opinion, the earlier decision of the Madras High Court was correct that passing of property by operation of law which is prohibited or restrained by section 9, does not include passing of property by devolution or succession, but refers to other cases of passing of property by operation of law such as insolvency where the person whose property passes by operation of law is in existence. For example, even if the workman or in case of his death his dependant is adjudicated insolvent the amount payable to him under the Act will not pass by operation of law and vest in the Court or receiver and will be payable in accordance with the Act to the workman or the dependant, as the case may be. It is true, as observed by the Full Bench of the Madras High Court that the earlier Division Bench decision of that Court did not expressly refer to the definition of workman which includes a dependant in case of death of the workman, while construing section 9, but in our opinion, the criticism is not correct that if the definition is noticed and the section is read in the light of that definition it will cover a prohibition for passing of compensation by devolution. As earlier shown by us, reading section 9 along with the definition of workman makes no difference. The point made out by the earlier case is that the words "other than the workman" show that the passing of property by operation of law contemplated by section 9 is of that type which recognises the presence of the workman. Reading section 9 with the aid of the definition as contained in section 2(1)(n) only shows that the passing of property by operation of law prohibited therein recognises the presence of the workman or in case of the death of his dependants. The section has absolutely no application for deciding the question of right to compensation on the death of the dependants. For these reasons, we are in respectful agreement with the view expressed by the earlier Division Bench case of the Madras High Court. Even assuming that the view expressed by the Full Bench is also a possible view of section 9, we do not think that there is justification for departing from the view taken as early as 1938 when the



Legislature did not intervene to overrule that view which had prevailed for nearly forty years. If the view taken in the earlier Madras case or that taken by the Calcutta High Court was not correct, the Legislature would have intervened and made suitable amendments in the Act as was made in the corresponding English Act of 1906 in 1925. As earlier pointed out by us, the Act was amended on 10 occasions between 1937 and 1977 without displacing the interpretation adopted by the Calcutta, earlier Madras and the Andhra Pradesh decisions which is a very strong indication to show that these decisions were in line with the intention of the Legislature. No reference is made to this aspect of the matter by the Full Bench decision of the Madras High Court.

5. <u>Our answers to the questions referred are as</u> <u>follows:</u>

 (1) The heir of a deceased dependant can claim the amount deposited as compensation even though the dependant died before he could file a claim before the Commissioner and before compensation could be awarded to him.
(2) The amount of compensation becomes the property of dependants and vests in them even before the Commissioner passes an order of disbursement."

37. Thus, in view of the discussion in the above paragraphs the position of law which emerges is that right to receive compensation under Section 4 of the Act crystallizes in favour of the dependant of deceased workman immediately on the date of the death of the workman in accordance with the Section 4A(1) of the Act. And even if such dependent dies before filing a claim petition, such crystallized right passes on to the legal representatives of the deceased dependant as there is no provision in the Act which states that the dependant should be alive at the time of filing of the claim petition. Therefore, this Court is of the firm view that the cause of action to receive the compensation was surviving even prior to the filing of the claim petiton as the right to receive such compensation had already accrued in her(deceased dependant) favour as she was alive at the time of the death of the deceased workman though she could

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not file the claim petition during her lifetime. Thus, this court answers the third question in affirmative.

Now coming to the factual matrix of the case the workman 38. died on 21.10.2008 and as her mother was alive on this date, a right to receive compensation under Section 4 of the Act crystallized in her favour as she, being a widowed mother, was a dependant upon her deceased son under Section 2(d)(i) of the Act. Although the mother died on 01.11.2008 prior to the filing of claim petition, the right to receive compensation under Section 4 of the Act crystallized in her favour on the date of the death and the same passed on to her legal representatives i.e., Claimants/Respondent no.1/1. and Claimant/Respondent no. 1/2 upon her death. Thus, the contentions raised in this respect by the learned counsel on behalf of the appellant/insurance company does not have any force.

39. Further, the submission of the learned counsel on behalf of the Cross Objector/Employer that the Cross Objector/Employer is not liable to make payment of the compensation as the Commissioner while 3 deciding issue no. has held appellant/insurance company liable to pay compensation, does not have any force as issue no. 3 pertained only with respect to the liability of the appellant/insurance company and the Commissioner has nowhere absolved the Cross Objector/Employer from the liability to pay the compensation. Thus, the Commissioner rightly held both the appellant/insurance company and the Cross Objector/Employer jointly and severally liable to pay the compensation.



Observation on the Objections raised by the Cross Objector/Employer:

40. Now coming to the objection raised by the learned counsel on behalf of the cross objector/employer that the penalty under Section 4A (3) was wrongly imposed as employer/cross objector was not aware about such claim petition and neither any registered legal notice was sent to the employer/cross objector are absolutely baseless. It is quite evident from the material available on the record that the legal notice dated 08.07.2010 was sent to the cross objector by the claimant/respondent no. 1/1 and claimant/respondent no. 1/2 demanding compensation payable under the Act, and the cross objector/employer *vide* a reply dated 02.08.2010 denied averments made in the said legal notice. Also, the cross objector was duly served with the notice of the claim petition upon which he even filed power before the Commissioner and thereafter, wilfully remained absent from the proceedings.

41. It is clear from the bare perusal of Section 4A of the Act that a penalty under Section 4A (3)(b) of the Act can be imposed if the employer fails to deposit the amount of compensation payable under Section 4 of the Act within the prescribed period therein, and the Commissioner has observed that there is no justification for such delay given by the employer in depositing the amount of compensation. However, it has been provided in the proviso to sub-section (3) of Section 4A that an order for the payment of penalty shall not be passed under clause (*b*) without giving a reasonable opportunity to the employer to show cause why it should not be passed. The intention behind the expression



'reasonable opportunity to employer to show cause' as used in proviso to the Section 4A (3)(b) of the Act is for the reason that the employer gets an opportunity to explain the reasons of delay in deposition of compensation before a penalty is imposed on him and not that a separate notice to show cause has to be issued. There is nothing in the proviso to Section 4A (3)(b) of the Act which shows that a separate notice is to be issued to the employer for imposing the penalty. Therefore, in cases where the employer was duly served with the registered notice of the claim petition by the Commissioner, the same would qualify as giving a reasonable opportunity to employer to show cause within the meaning of the proviso to Seciton 4A (3)(b) of the Act.

42. A similar view has been expressed by the The Hon'ble Bombay High Court in **Ramalu Balkrishna Sagar v. Rambhau Tukaram Shendre, 2005 SCC OnLine Bom 1736**, where the Bombay High Court while explaining the meaning of the expression 'giving a reasonable opportunity to employer to show cause' gave following observations:

"30. To sum up, since the legislature could have used the expression indicating that nothing short of a notice to show cause was required to be issued by the Commissioner on the question of penalty, which it has not chosen, and since the legislature was content with the use of expression 'reasonable opportunity of showing cause', it is imperative that if on facts of the case it is found that the employer had such a reasonable opportunity which he squandered away he would not be entitled to insist upon any further notice."

43. As already discussed in the above paragraph the cross objector was duly served with the notices of the claim petition and the cross objector even filed power before the commissioner, thus he was well aware about the claim petition and was also given



reasonable opportunity to contest the claim petition. And therefore, the condition as provided under the proviso to Section 4A (3) was fulfilled for imposition of penalty. Thus, the contentions raised by the learned counsel on behalf of Cross Objector have no force.

44. In view of the discussion in the above paragraphs, the appeal as well as cross objection are dismissed.

(DR. NUPUR BHATI),J

Reserved- Ajay-DJ/-