

IN THE COURT OF SH. S.C YADAV, COMMISSIONER
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)
LABOUR DEPARTMENT, GOVT. OF N.C.T. OF DELHI
5, SHAM NATH MARG, DELHI-110054

No.CEC/SD/D/23/2018 | 263 .

Date: 08/08/2023

IN THE MATTER OF:

Smt. Pooja & Anr.

R/o - H.No. 440-442, Sanjay Camp,
Dakshinpuri, New Delhi – 110062

V/s

.....Applicant/Claimant

Sh. Udhum Singh S/o Sh. Brijlal,

R/o Village Deman Pur Majhgaon,
Post Office Gosva, Police Station Mallava,
District Hardoi, Uttar Pradesh - 241001

.....Respondent No.1

Bhagwan Mahaveer Ahinsa Kendra Trust

Butterfly Park, Qila Rai Pithora,
Sainik Farm, Mehrauli – Gurgaon Road,
New Delhi - 110016

.....Respondent No.2

ORDER

1. By this order, I will dispose of application dated 11/10/2022. Filed by respondent no 2 Bhagwan Mahaveer Ahinsa Kendra Trust for rejection of claim application.
2. Respondent no 2 submitted therein that applicant has levelled various allegations against respondent no 1 & 2 and sought relief of death compensation along with penalty with the respondents. The main objection of the respondent is this that an ex-parte award dated 07/01/2019 was passed by the then Ld. Authority, which was pursued by married and measure sister of the alleged deceased. Though she is not entitled for any relief being not covered under the definition of “dependant” as defined under section 2(d) of EC Act, 1923.
3. It is further submitted that the present claim application has been filed by one of Sh. Panni Lal father of deceased, who unfortunately expired during the pendency of the matter and thus there is no dependant left behind to the deceased. The present claim application was filed Lt. Sh. Panni Lal through Smt. Pooja who is married and measure sister of deceased and does not fall under the category of dependant as defined under section 2(d) of EC Act, 1923. In the last respondent submitted that since present



applicant Smt. Pooja who is admittedly married and measure sister of deceased who is pursuing this case is not entitled for any relief against the respondents since she does not fall under the category of dependants as defined under section 2(d) of the Act, as such claim is not maintainable against them. Respondent relied upon the judgement of Hon'ble Supreme Court of India in Civil(App) 6938/2022 titled as "The State of Maharashtra & Ors v/s Madhuri Maruti Vidhate" *wherein Hon'ble apex court held that the married daughter cannot be said to be dependant.*

4. Ld. Counsel for claimant Sh. R.K Nain argued on the application by denying the contention and submission of application of respondent on the ground that original case was filed by the father of the deceased employee and during the proceedings the applicant who is the father of deceased employee was expired and at latter stage present applicant Smt. Pooja has been impleaded in this case as the petitioner. Further Ld. Counsel submitted that since the case / claim was filed by the father of deceased as such provision of section 2(d) of the EC act, 1923 is not applicable in this case.
5. Ld. Counsel for claimant relied upon the judgement of Hon'ble Supreme Court of India in the matter "North East Karnataka Road Transport Corporation v/s Sudha in Civil(App) 7470/2009 decided on November 2018"- *wherein Hon'ble court has settled the Rules regarding interest and penalty.*
6. Another judgement on which Ld. Counsel for claimant relied is Pratap Narayan singh Deo v/s Siri Niwas Sabata & Anr. Civil (App) 36/197 decided on 04/12/75 (c) - *wherein Hon'ble court held u/s 3,4A and 19 penalty – interest - duty of employer to pay compensation as soon as personal injury is caused to the workman – employer failed to make compensation – section 19 does not suspend such liability – whether the employer was liable to pay penalty and interest – held: yes.*
7. Another judgement on which Ld. Counsel relied is Hon'ble High Court of Judicator Rajasthan in the matter titled as Gopal Synthetics v/s Workmen's Compensation kota & Anr. CM(App) 309/1987 decided on 17 December 1993 – *wherein Hon'ble Court held that "from a perusal of the objects and reasons, it would be evident that workmen's compensation Act, 192, has been promulgated for the benefit of the workman and liability has been fastened on the employer. This liability has to be with reference to the date when the amount has become due – only a dependant has right to claim compensation – once right vests in dependant, it becomes Civil right, right of dependant could be claimed by his legal representatives if dependants dies either during pendency of the claim or thereafter" .*
8. Submission adduced by both the Ld. Counsels heard in detail.



9. The main objection of the respondent is that present applicant Smt. Pooja is not falls dependants as defined under section 2(d) of the Act. Section 2(d) of the Act is reproduced here as under : -

"(d) "dependant" means any of the following relatives of a deceased 9 [employee], namely:—
(i) a widow, a minor 10[legitimate or adopted] son, and unmarried 10[legitimate or adopted] daughter, or a widowed mother; and
(ii) if wholly dependent on the earnings of the 9 [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 1 [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;"]

10. In view of above provision of section 2(d) present applicant Smt. Pooja does not fall under the category of the dependants as defined under the EC Act, 1923. As held by the Hon'ble Supreme Court of India in Civil(App) 6938/2022 titled as "The State of Maharashtra & Ors v/s Madhuri Maruti Vidhate" – married daughter cannot be said to be dependent. The settled law of Hon'ble apex Court is applicable in this case also. On the other hand judgement on which Ld. Counsel for the claimant relied is not applicable in this case.

11. In view of above application filed by the respondent in question is allowed. In view of this present claim is not maintainable for further proceedings to decide the case.

12. Given under my hand and seal of this Authority on this 20th day of August, 2023.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

