

BOMBAY HIGH COURT

Sitabai

Vs.

Auto Engineers

Special Civil Appln. No.2828 Of 1970

(K.K. Desai and D. Deshpande, JJ.)

22.02.1971

JUDGMENT

K.K. Desai, J.

1. In this petition under Art. 227 of the Constitution the petitioner, who is the widow of a deceased employee of Messrs. George Motors contests the legality of the order of the Second Labour Court dated October 9, 1970 whereby the petitioner's claim for computation instituted under Section 33C(2) of the Industrial Disputes Act was dismissed. The finding against the petitioner was that under sub-s. (2) of Section 33C an application for computation could only be made by the workman himself. The necessary corollary was that the petitioner as the widow and only heir of the deceased workman had no cause of action to make any claim under sub-s. (2) of Section 33C.

2. At the outset it requires to be stated the above finding appears to us to be without any warrant in law. It is well established that all civil rights of every kind vested in a deceased person and all causes of action in that connection, except those which are in the category of not capable of surviving after his death, survive to his heirs. Causes of action, which are personal and do not survive, consist of damages due for personal injuries suffered by a deceased and for defamation and assault. In that connection, the Fatal Accidents Act was passed so that damages suffered in consequence of death caused by personal injuries could be claimed on behalf of the dependents of a deceased person. But apart from personal causes of action which die with the death of a deceased person every other cause of action for civil claims continues in existence so as to survive to his heirs. The decision that was given by the Labor Court, therefore, appears to be contrary to the above well established position.

3. In connection with its above finding the Labour Court referred to sub-s. (5) of Section 33C and to Rule 67 of the Industrial Disputes (Central) Rules and to Form K-3 prescribed under the above

rules. It also referred to Rule 67 of the Bombay Rules and Form XXC prescribed under those rules. It also referred to the decision in the case of *The U.P. Electric Supply Co. Ltd. v. Meena Chatterji*¹. Now, sub-s. (5) of Section 33C enables several and numerous workmen to make a single application for recovery of amounts claimable under Section 33C(1) and Section 33C(2) provided these workmen "employed

¹(1969) 36 F.J.R. 308

under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money". It is difficult to understand why the phrase "workmen" as contained in this sub-s. (5) should have enabled the Court to hold that the cause of action for computation of money as contained in sub-s. (2) does not survive to the heirs of a deceased workman. It is true that certain forms for making applications under sub-s. (2) of Section 33C are prescribed under the above rules. It is also true that in the rules the phrase "workman" is used in connection with the matter of application to be made under sub-s. (1) or sub-s. (2) of Section 33C. The forms prescribed are permissive and are for convenience. The forms are prescribed because ordinarily a workman would not be aware of the allegations that he must make in his application made under the provisions of sub-ss. (1) and (2) of Section 33C. These forms are not compulsory forms and applications not made in the prescribed forms would have to be dealt with by the Labour Court in due course. There is nothing in these rules which is intended to deprive the heirs of a deceased workman of the rights and/or the causes of action which survive to them upon the death of a workman. We see no reason to accept the findings made in the case of *U. P. Electric Supply Company Limited v. Meena Chatterji*², v. , that the claim for computation created by sub-s. (2) of Section 33C does not survive to the heirs or assignees of a workman. Such a finding necessarily must create unthought of difficulties as would appear from the facts in this case. The claim of the petitioner is in respect of arrears of gratuity amount which the employer Messrs George Motors failed to pay the petitioner. It is difficult to understand why the amount of gratuity which became payable to the deceased husband of the petitioner should not be claimable by the petitioner by making a claim under sub-s. (2) of Section 33C. Having regard to the well-established principles that all causes of action, except those which are known as dying along with the death of a person, must survive to his heirs, the cause of action created in favour of workmen under sub-s. (2) of Section 33C should in normal circumstances survive to their heirs. Under the circumstances the findings made by the Labor Court, as recited above, are set aside. The order of the Labour Court dismissing the petitioner's application is set aside. Rule is made absolute. The Labour Court is directed to consider the merits of the petitioner's claim in her application (IDA) No. 99 of 1968 in due course according to law. Respondent No. 1, who has appeared in this petition, to show cause will pay costs of the petition.

Petition Allowed.

²(1969) 36 F.J.R. 308